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GENERAL AVIATION REVITALIZATION ACT OF 1993

HEARING

BEFORE THE

SUBCOMMITTEE ON ECONOMIC AND COMMERCIAL LAW

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

H.R. 3087

TO AMEND THE FEDERAL AVIATION ACT OF 1958 TO ESTABLISH TIME LIMITATION ON CERTAIN CIVIL ACTIONS AGAINST AIRCRAFT MANUFACTURERS, AND FOR OTHER PURPOSES

MAY 12, 1994

Serial No. 48

Printed for the use of the Committee on the Judiciary

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CONTENTS

HEARING DATE

Page
May 12, 1994 1

TEXT OF BILL

H.R. 3087 3

OPENING STATEMENT

Brooks, Hon. Jack, a Representative in Congress from the State of Texas, and chairman, Subcommittee on Economic and Commercial Law 1

WITNESSES

Boyer, Phil, president, Aircraft Owners and Pilots Association 54
Creamer, Robert B., executive director, Illinois Public Action, on behalf of Citizen Action, Consumers Union, and Public Citizen 105
DeFazio, Hon. Peter A., a Representative in Congress from the State of Oregon 27
Goglia, John, member, International Association of Machinists and Aerospace Workers 68
Hansen, Hon. James V., a Representative in Congress from the State of Utah 20
Hvass, Charles T., Jr., Hvass, Weisman & King, Minneapolis, MN 75
Lloyd, Hon. James F., former Representative in Congress from the State of California 31
Meyer, Russell W., Jr., chairman and chief executive officer, Cessna Aircraft Company 41
Stearman, Ronald O., professor, Aerospace Engineering and Engineering Mechanics Department, the University of Texas at Austin 119

LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

Boyer, Phil, president, Aircraft Owners and Pilots Association: Prepared statement 57
Creamer, Robert B., executive director, Illinois Public Action, on behalf of Citizen Action, Consumers Union, and Public Citizen: Prepared statement .. 109
DeFazio, Hon. Peter A., a Representative in Congress from the State of Oregon: Prepared statement 29
Fish, Hon. Hamilton, Jr., a Representative in Congress from the State of New York: Statement 16
Glickman, Hon. Dan, a Representative in Congress from the State of Kansas: Statement 9
Goglia, John, member, International Association of Machinists and Aerospace Workers: Prepared statement 70
Hansen, Hon. James V., a Representative in Congress from the State of Utah: Prepared statement 23
Hvass, Charles T., Jr., Hvass, Weisman & King, Minneapolis, MN: Prepared statement 78
Lloyd, Hon. James F., former Representative in Congress from the State of California:
    May 8, 1994, letter from Brian Lloyd, president, Lloyd Internetworking, to James F. Lloyd 39
    Prepared statement 33

Page
Meyer, Russell W., Jr., chairman and chief executive officer, Cessna Aircraft Company: Prepared statement 45
Stearman, Ronald O., professor, Aerospace Engineering and Engineering Mechanics Department, the University of Texas at Austin: Prepared statement 121

APPENDIXES

Appendix 1.—Witness responses to additional questions for the hearing record 153
  Mr. Creamer 153
  Mr. Goglia 156
  Mr. Hvass 157
  Mr. Meyer 161
Appendix 2.—Material submitted for the hearing record 164
  Mitchell, Monte, president, Aircraft Electronics Association, Independence, MO.: May 12, 1994, statement 164
  Slater, Hon. Jim, a Representative in Congress from the State of Kansas: May 12, 1994, statement 169

GENERAL AVIATION REVITALIZATION ACT OF 1993

THURSDAY, MAY 12, 1994

House of Representatives,
Subcommittee on Economic and Commercial Law,
Committee on the Judiciary,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2141, Rayburn House Office Building, Hon. Jack Brooks (chairman of the subcommittee) presiding.

Present: Representatives Jack Brooks, Patricia Schroeder, Dan Glickman, Howard L. Berman, Robert C. Scott, David Mann, Melvin L. Watt, Hamilton Fish, Jr., Charles T. Canady, Bob Inglis, Bob Goodlatte, and Carlos J. Moorhead.

Subcommittee staff present: Cynthia W. Meadow, counsel; George P. Slover, assistant counsel; Perry Apelbaum, assistant counsel; Carrie Bedwell, assistant counsel; Catherine S. Cash, research assistant; Deloris L. Cole, office manager; full committee staff present: Jonathan R. Yarowsky, general counsel; Alan F. Coffey, minority chief counsel; and Roger Fleming, minority counsel.

OPENING STATEMENT OF CHAIRMAN BROOKS

Mr. Brooks. Today the subcommittee will hear testimony on H.R. 3087, the General Aviation Revitalization Act of 1993.

The subcommittee comes to this hearing against a backdrop of declining sales of general aviation aircraft, particularly single-piston engine aircraft. This steep decline has gone hand in hand with significant employment losses—an estimated 20,000 manufacturing jobs and 80,000 support jobs. At the same time, foreign manufacturers have aggressively sought to expand their exports of general aviation aircraft into our markets.

The industry's answer to this course of events is to seek statutory modification in the private tort remedies available to victims. A number of States have already adopted statutes of repose and other perceived tort reforms, such as caps on monetary damages. H.R. 3087 represents the most recent response of manufacturers and others to the general aviation industry's economic problems.

The legislation would represent a significant Federal intervention into an area that traditionally has been the sole province of State law. It is therefore important that we approach this legislation with an open mind so as to give close scrutiny to the weight of the arguments of both proponents and opponents.

In this regard, I am hopeful that the arguments presented from both sides will be strong on documented and reasoned analysis—rather than mere anecdotes.

Obviously, a key inquiry for us involves ascertaining the magnitude and causes of the decline of the general aviation industry in this country. If the industry's decline is truly rooted in excess liabilities cost, then we will need to consider how best to remedy the situation for manufacturers without losing sight of the important aspects of product innovation and safety as well as the welfare of future victims and their families.

Today, we will hear from an impressive array of witnesses with a diverse set of perspectives.

I also want to acknowledge the energetic and thoughtful advocacy of the legislation by its principal sponsor, who has mentioned it to me no less than 8,000 times, Mr. Dan Glickman.

He has been an important force in moving this issue onto the agenda of the committee, even as we have been dealing in good order with the major issues of crime, telecommunications, insurance, the independent counsel reauthorization, and the abortion clinic piece. We have been pretty busy.

But now at this time we look forward to the witnesses' testimony.

[The bill, H.R. 3087, follows:]

I

103d CONGRESS
1st Session

H. R. 3087

To amend the Federal Aviation Act of 1958 to establish time limitations on certain civil actions against aircraft manufacturers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

September 15, 1993

Mr. Glickman (for himself, Mr. Hansen, Mr. Carr of Michigan, Mr. Michel, Mr. Mineta, Mr. Shuster, Mr. Oberstar, Mr. Clinger, Mr. Inhofe, Mr. Lightfoot, Mr. Cunningham, Mr. Allard, Mr. Archer, Mr. Armey, Mr. Bacchus of Florida, Mr. Bachus of Alabama, Mr. Baker of California, Mr. Baker of Louisiana, Mr. Ballenger, Mr. Barrett of Nebraska, Mr. Bartlett of Maryland, Mr. Barton of Texas, Mrs. Bentley, Mr. Bereuter, Mr. Bilbray, Mr. Bilirakis, Mr. Blackwell, Mr. Bliley, Mr. Blute, Mr. Boehlert, Mr. Boehner, Mr. Bonilla, Mr. Borski, Mr. Boucher, Ms. Brown of Florida, Mr. Brown of California, Mr. Bunning, Mr. Burton of Indiana, Mr. Buyer, Mr. Callahan, Mr. Calvert, Mr. Canady, Mr. Cantwell, Mr. Clyburn, Mr. Collins of Georgia, Miss Collins of Michigan, Mr. Combest, Mr. Coppersmith, Mr. Cox, Mr. Cramer, Mr. Crane, Mr. Crapo, Ms. Danner, Mr. Darden, Mr. Deal, Mr. DeLay, Mr. de Lugo, Mr. Derrick, Mr. Dicks, Mr. Dooley, Mr. Doolittle, Mr. Dornan, Mr. Duncan, Ms. Dunn, Mr. Durbin, Mr. Emerson, Mr. Everett, Mr. Ewing, Mr. Fish, Mr. Foglietta, Mrs. Fowler, Mr. Frank of Massachusetts, Mr. Franks of Connecticut, Mr. Gallegly, Mr. Gallo, Mr. Gekas, Mr. Pete Geren of Texas, Mr. Gibbons, Mr. Gilchrest, Mr. Gillmor, Mr. Gilman, Mr. Gingrich, Mr. Gordon, Mr. Goss, Mr. Grams, Mr. Grandy, Mr. Greenwood, Mr. Gunderson, Mr. Hall of Ohio, Mr. Hall of Texas, Mr. Hancock, Ms. Harman, Mr. Hastert, Mr. Hayes, Mr. Hefley, Mr. Hefner, Mr. Herger, Mr. Hobson, Mr. Hoekstra, Mr. Hoke, Mr. Holden, Mr. Horn, Mr. Houghton, Mr. Huffington, Mr. Hutchinson, Mr. Hutto, Mr. Hyde, Mr. Inglis of South Carolina, Mr. Istook, Mr. Jacobs, Mr. Johnson of Georgia, Ms. Eddie Bernice Johnson of Texas, Mrs. Johnson of Connecticut, Mr. Sam Johnson of Texas, Mr. Johnston of Florida, Ms. Kaptur, Mr. Kasich, Mr. Kim, Mr. Kingston, Mr. Knollenberg, Mr. Kolbe, Mr. Kyl, Mr. Laughlin, Mr. Leach, Mr. Lehman, Mr. Lewis of California, Mr. Lewis of Florida, Mr. Linder, Mr. Livingston, Mr. Machtley, Mr. Manzullo, Mr. Martinez, Mr. Matsui, Mr. Mazzoli, Mr. McCandless, Mr. McCollum, Mr. McCrery, Mr. McCurdy, Mr. McDade, Mr. McHugh, Mr. McKeon, Mr. McMillan, Mrs. Meyers of Kansas, Mr. Mica, Mr. Miller of Florida, Ms. Molinari, Mr. Mollohan, Mr. Montgomery, Mr. Moorhead, Mr. Murtha, Mr. Myers of Indiana, Mr. Neal of Massachusetts, Ms. Norton, Mr. Orton, Mr. Oxley, Mr. Packard, Mr. Parker, Mr. Pastor, Mr. Payne of Virginia, Mr. Paxon, Mr. Penny, Mr. Peterson of Minnesota, Mr. Peterson of Florida, Mr. Petri, Mr. Porter, Mr. Portman, Mr. Poshard, Mr. Quinn, Mr. Ravenel, Mr. Regula, Mr. Richardson, Mr. Roberts, Mr. Rogers, Mr. Rohrabacher, Ms. Ros-Lehtinen, Mr. Roth, Mr. Rowland, Mr. Royce, Mr. Santorum, Mr. Saxton, Mr. Schaefer, Mr. Shaw, Mr. Shays, Ms. Shepherd, Mr. Skeen, Mr. Slattery, Mr. Smith of Oregon, Mr. Smith of New Jersey, Mr. Smith of Texas, Ms. Snowe, Mr. Spence, Mr. Spratt, Mr. Stearns, Mr. Stenholm, Mr. Stump, Mr. Sundquist, Mr. Swett, Mr. Swift, Mr. Talent, Mr. Taylor of North Carolina, Mr. Taylor of Mississippi, Mr. Thomas of Wyoming, Mr. Thornton, Mrs. Thurman, Mr. Torkildsen, Mr. Torricelli, Mr. Towns, Mr. Traficant, Mr. Tucker, Mr. Upton, Mr. Valentine, Mr. Visclosky, Mr. Volkmer, Mrs. Vucanovich, Mr. Walsh, Mr. Wolf, Mr. Young of Alaska, Mr. Young of Florida, Mr. Zeliff, and Mr. Zimmer) introduced the following bill; which was referred jointly to the Committees on Public Works and Transportation and the Judiciary

---

A BILL

To amend the Federal Aviation Act of 1958 to establish time limitations on certain civil actions against aircraft manufacturers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "General Aviation Revitalization Act of 1993".

SEC. 2. TIME LIMITATION ON CIVIL ACTIONS AGAINST AIRCRAFT MANUFACTURERS.

Title XI of the Federal Aviation Act of 1958 (49 U.S.C. App. 1510–1518) is amended by adding at the end the following new section:

"SEC. 1119. TIME LIMITATION ON CIVIL ACTIONS AGAINST AIRCRAFT MANUFACTURERS.

"(a) In General.—No civil action for damages for death or injury to persons or damage to property arising out of an accident involving a general aviation aircraft may be brought against the manufacturer of the aircraft or the manufacturer of any component, system, subassembly, or other part of the aircraft, if the accident occurred—

"(1) more than 15 years after—

"(A) the date of delivery of the aircraft to its first purchaser or lessee, if delivered directly from the manufacturer; or

"(B) the date of first delivery of the aircraft to a person engaged in the business of selling or leasing such aircraft; or

"(2) with respect to any component, system, subassembly, or other part which replaced another product originally in, or which was added to, the aircraft, and which is alleged to have caused the claimant's damages, more than 15 years after the date of the replacement or addition.

"(b) GENERAL AVIATION AIRCRAFT DEFINED.—For the purposes of this section, the term 'general aviation aircraft' means any aircraft for which a type certificate or an airworthiness certificate has been issued by the Administrator, which, at the time such certificate was originally issued, had a maximum seating capacity of fewer than 20 passengers, and which was not, at the time of the accident, engaged in scheduled passenger carrying operations as defined under regulations issued under this Act.

"(c) RELATIONSHIP TO OTHER LAWS.—This section supersedes any Federal or State law to the extent that such law permits a civil action described in subsection (a) to be brought after the applicable deadline for such civil action established by subsection (a).".

SEC. 3. CONFORMING AMENDMENT.

The table of contents contained in the first section of the Federal Aviation Act of 1958 is amended by adding at the end of the matter relating to title XI of such Act the following:

"Sec. 1119. Time Limitation on Civil Actions Against Aircraft Manufacturers.
  "(a) In general.
  "(b) General aviation aircraft defined.
  "(c) Relationship to other laws.".

○

Mr. GLICKMAN. Mr. Chairman, since I have talked to you 8,000 times, would you let me make a couple of opening comments?

Mr. BROOKS. I would be honored.

At this time, we will recognize the distinguished member of this subcommittee, chairman of the Intelligence Committee, member of several other committees, runs most of Congress, Mr. Dan Glickman. A short statement, since you are already mentioned it 8,000 times.

Mr. GLICKMAN. I want to thank you for allowing us to have this hearing. As you have said, I doggedly have pursued this issue for about a decade. I first introduced this bill in 1986. It has passed the House Public Works Committee, I think, on two separate occasions. The bill has passed the Senate 91 to 8. The bill has 295 cosponsors.

Perhaps what we should just do is wait until everybody in the House cosponsors the bill, which I don't know if that could happen, but I would have to say we have nearly 300 cosponsors, well over two-thirds of the House, a pretty even mix of Democrats and Republicans sponsoring this bill.

This bill is not about protecting manufacturers from exposure. It is not the camel's nose under the tent. It is not about taking on trial lawyers. It is not about pushing tort reform. This is about jobs. This is about the future of aviation.

This is a simple bill that creates a statute of repose of 15 years on an industry that is federally regulated from birth to death. You have to have an airplane inspected, licensed, and improved continuously from the Federal Government. You can't even operate an airplane without getting a license from the Federal Government. There is no State involvement in the operation of aviation and airplanes. That is why we think there is an appropriate reason to have a Federal statute of repose.

Mr. Chairman, our witnesses, as you stated, will talk about job loss, will talk about the fact that the people building these planes now are from Brazil, from Canada, from Europe, and perhaps from the Far East. The numbers of American manufacturers are diminishing quickly, while the numbers of foreign manufacturers are rapidly increasing. The job loss in our industry is tremendous.

And this is an interesting thing, Mr. Chairman. We are going to hear today from Mr. John Goglia, of the International Association of Machinists. The machinists union are perhaps one of the strongest advocates of this bill. They traditionally have not aligned with manufacturers on a bill like this. Traditionally they have been with some of the folks who may have reservations about this bill.

The reason the IAM supports this bill is because this means jobs, jobs to an industry that has lost thousands of jobs. Mr. Chairman, not only the machinists' union but the Air Line Pilots Association, as well as several local chapters of the United Auto Workers, are strongly in favor of this bill.

I am not going to talk forever, because, as you say, this is an issue on which we will hear from the witnesses on. But this is a reasonable, sensible approach. The fact is that an airplane is built to defy the laws of gravity and last for a very long time. Should it be held to a perpetual standard of liability from the manufacturers, or does it make sense to say at some point the manufacturer should no longer be the prime source of liability? Perhaps someone else in the chain was at fault, perhaps the pilot, the mechanic, the fixed-base operator?

And the issue here is that since airplanes are built to last so long, that you have airplanes flying that are 40 and 50 years old, and are being held to the same standard of liability as a plane that was built last week.

And for that reason, we are not building any more. There are virtually no single-engine planes built any more in America. That is wrong. That has cost us thousands of jobs.

Mr. Chairman, I would speculate to say there are thousands of jobs in your district that have been affected by this; it's not just people who work for Beech, Cessna, Lear, Piper. I will bet there are people in every congressional district that have been affected.

I know you don't want to see rest of the world take over an aviation industry and domination by the United States. That is what is happening. This bill is a sensible approach.

I appreciate your granting this hearing today. I hope we can move the bill quickly.

Mr. BROOKS. Move it? I thought we were in the hearing today.

Mr. GLICKMAN. I just told you what I hope, Mr. Chairman.

Mr. BROOKS. His hopes regroup every day.

[The prepared statement of Mr. Glickman follows:]

OPENING STATEMENT
BY
REP. DAN GLICKMAN (D-KS)
H.R.3087 / S.1458
GENERAL AVIATION REVITALIZATION ACT OF 1993
MAY 12, 1994

Mr. Chairman, I want to thank you for agreeing to hold this hearing today on legislation I have introduced to revive this country's general aviation industry.

As you know, I have doggedly pursued this issue for almost a decade now, in an attempt to provide some relief to the manufacturers and users of single engine, piston aircraft.

Mr. Chairman, this issue is not about pushing tort reform, this is not about taking on the trial lawyers, and this is not about protecting manufacturers from exposure. This is about jobs.

This is about the future of aviation.

If we don't reclaim an industry which was once the exclusive domain of American companies, young pilots who are today learning to fly in foreign-built aircraft will never have the opportunity to climb into a new Cessna, Beech or Piper. Aerospatiale of France is now the leading supplier of flight training aircraft in the United States. These are the planes that you don't have to be a millionaire to own. These are the planes that pilots learn to fly in and which spark people's interest in flying.

This small plane industry is the genesis of the entire aviation industry. You don't learn to fly in a F-15 or a Boeing 747. You learn to fly in the piston engine planes, the backbone of the industry. That is why groups such as the Airline Pilots Association, and aircraft manufacturers from Boeing to

McDonnell Douglas support this legislation. Not because they want to start producing piston aircraft, but because they know that we are jeopardizing our position as the world leader in aviation and aerospace by ignoring this fundamental problem.

Traditionally, the United States has been the leader in the high tech aviation industry, but liability costs have dragged it down so that we are unable to compete. In 1980, there were 29 manufacturers of piston aircraft in the U.S. and 15 foreign manufacturers. In 1992, there were nine U.S. manufacturers and 29 foreign manufacturers of piston aircraft. We must act now, before foreign manufacturers, who are not encumbered by the high liability costs of American companies, completely fill the void in our aircraft production.

Getting back to the jobs question, the International Association of Machinists sees this bill as a critical step to restore jobs to thousands of aerospace workers and machinists across the country. The chairman of Cessna Aircraft, Russ Meyer, who is here with us today, has pledged that if this bill is signed into law, Cessna will restart production of three models of piston-powered airplanes. Restarting those production lines will create jobs for 2,000 people within 18 months after the bill becomes law. Using a typical industry multiplier for aircraft engines, avionics and other materials, an additional 4,000 jobs would in turn be created.

We can expect similar job growth across the industry, in all regions of the country. In short, the passage of this bill will put thousands of people back to work in a high technology, highly skilled industry without costing the federal government a single penny.

Not only have jobs been lost, but research and innovation has been effectively stifled. General aviation companies have neither the funds nor the incentive to produce new designs. Why put a new design or improvement on an airplane if you will later be accused that the original design must have been defective if it was upgraded years later?

The NASA Administrator, Daniel Goldin, came out to my home town of Wichita two months ago to take a look at the general aviation industry and release a General Aviation Task Force Report. The report stressed the importance of this industry to the future of our nation's transportation capabilities. It also discussed critical technology which must be developed to move the industry into the next century.

But how can we convince manufacturers to introduce new technologies to the cockpit, to use advanced composite materials, or evaluate new technologies for future environmental requirements or fuel economies, if every time we take one step forward, we open the door to a whole rash of litigation? Obviously, manufacturers should be subject to liability for a reasonable length of time after the airplane is produced. But at some point, the rules of reason must apply! We would have never seen the catalytic converter, fuel injected engines, or anti-lock brakes in the automotive industry if they faced the same kind of liability exposure that aircraft manufacturers do.

I'm not saying that this bill will cure every ache that has ever bothered the general aviation industry. No one is promising a return to the boom years of the late 1970's when U.S. factories shipped about 16,000 new general aviation planes each year. But we are talking about real manufacturing job growth at a time when we desperately need jobs.

Mr. Chairman, I first introduced this kind of bill in

1986. While the bill has been changed to some degree, the fact of the matter is that this bill has been around for 8 years. In the meantime, tens of thousands of jobs have been lost. We now have 295 cosponsors on the bill -- over two-thirds of the House of Representatives, both Democrat and Republican. The bill is supported by unions, the consumers of general aviation, and the manufacturers. The Senate passed a similar bill last month with a vote of 91 to 8. And that same Senate bill will be reported out of the full Public Works Committee next Tuesday! It's almost too good to be true that we have this kind of support. But my constituents at home do not understand why this bill cannot move to the floor for a vote.

Mr. Chairman, I confess, I don't have an answer for them. The U.S. has dominated the aviation industry since the Wright Brothers had their first flight at Kitty Hawk. But that dominance hangs by a thread unless steps are taken to bolster the industry. We must get this legislation to the floor, and let the merits of the bill speak for themselves.

Mr. BROOKS. Mr. Canady.

Mr. CANADY. Thank you, Mr. Chairman.

I want to join in thanking you for conducting this hearing today.

I would like to ask that the statement of Mr. Fish, who is detained, be made part of the record.

Mr. BROOKS. Without objection, so ordered.

[The prepared statement of Mr. Fish follows:]

STATEMENT OF THE HONORABLE HAMILTON FISH
ON AIRCRAFT MANUFACTURER'S LIABILITY

MAY 12, 1994

Mr. Chairman, I would like to welcome our witnesses here this morning. The issue of liability reform for manufacturers of general aviation aircraft has been pending in Congress for a decade now, and some of our witnesses here today have been engaged in this battle for a long time. In particular, I want to welcome Russ Meyer and Phil Boyer to our Subcommittee.

General aviation is an industry that has come to symbolize our nation's finest qualities -- inventiveness, imagination, technological innovation, individualism, self-reliance and quality workmanship. These companies have been building quality airplanes, in some instances, for decades. Unfortunately, it is an industry that has become the victim of its own success. The better you build planes, the longer they last, and the longer they last, the greater is your potential liability because of the confused patchwork of tort law in this country. General aviation is in a classic catch-22 situation -- a quality industry is being punished because of its success.

As some of you may know, I have been a cosponsor of legislation to reform our liability laws with regard to aviation manufacturers for four consecutive Congresses. I have been pleased to join in this effort with my good friend and Judiciary colleague, Dan Glickman.

Mr. Chairman, it is no secret that this Committee has been the obstacle to allowing a vote by the full House on this issue. Despite legislation having been referred here in every Congress since the 99th, we have held only one hearing on this matter and have never considered a bill for markup. The legislation before us today, S.1458, was approved by the Senate in March of this year by a vote of 91 to 8; and H.R. 3087, Mr. Glickman's bill has 295 cosponsors, including a bipartisan representation of 17 members of the Judiciary Committee.

Over the years, legislation to address this issue has been narrowed and made more specific. The legislation before this Committee today simply provides for a statute of repose beyond which the manufacturer of an aircraft cannot be sued for the original design and construction of its product. The Senate bill before us provides for an 18 year statute of repose, while H.R.3087, Mr. Glickman's bill, proposes a 15 year statute.

This legislation does not preclude an individual's ability to bring a lawsuit regarding an aircraft. It merely provides some relief to the manufacturer of the original frame and parts of an aircraft from liability, after the product has left the manufacturer's possession and control for a reasonable period of time. The concept of the legislation is reasonable: why should the original manufacturer of an aircraft be held liable indefinitely when after many years the product may very well not even contain an original component. Furthermore, this legislation provides for, what is in effect, a rolling statute of repose for all replacement parts on an aircraft. Suits clearly may be brought beyond the initial term of 15 or 18 years, because that statute of repose begins to run at the time the replacement part is installed.

The general aviation aircraft industry in this country has been severly damaged due to the spiralling costs of product liability. Mr. Chairman, this legislation is a fair response to that unfortunate fact.

This legislation has received overwhelming support in every Congress since 1986. However, to date, the opponents of this legislation have been successful in preventing a vote by the full House. It is my sincere hope that in this 103rd Congress, after many years of work, our efforts will be brought to a successful conclusion.

I look forward to hearing the testimony from our witnesses this morning. Thank you.

Mr. CANADY. I would like to make a brief comment related to the issue of jobs.

Mr. BROOKS. The gentleman will proceed.

Mr. CANADY. I can testify to the devastating impact that the liability situation has had on the general aviation aircraft manufacturing industry. In my congressional district, in 1980, Piper Aircraft operated a general aviation aircraft manufacturing facility that provided 2,500 jobs to people in my community. By 1985, that plant was closed. Those jobs were lost. A great deal of human suffering and harm resulted from the loss of those jobs to those 2,500 families.

This is something that has an important human dimension. I think that it is something we need to move forward on quickly.

I appreciate this opportunity to hear the witnesses and we look forward to their testimony.

Mr. BROOKS. All members may want to put in opening statements. They would all be welcome to do that, without objection. That privilege will be extended to all of the members of the subcommittee.

We will now hear from our witnesses, starting with Mr. James V. Hansen, a Republican from Farmington, UT, who represents the First District of Utah. He is a cosponsor of the bill that we are hearing today, H.R. 3087.

We are delighted to hear from you, Mr. Hansen.

STATEMENT OF HON. JAMES V. HANSEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

Mr. HANSEN. Thank you very much, Mr. Chairman. We appreciate your comments and the idea of being open-minded in looking at this. I personally appreciate that. I want you to know that. I have submitted my testimony and I will speak to it briefly, if I could.

Mr. Chairman, after World War II there was the heyday of the light aircraft industry. The single-engine piston-driven airplanes, they were everywhere. There was Cessna, Piper, Beech, you name it. I have flown about every one of those.

And now we see that today, as we try to find who makes light aircraft in America, you really don't see many made in the United States. As you stated in your opening comments, you see a lot of them coming from foreign shores into this country. Basically, the single-engine light aircraft industry is in the trash heap. But it has the chance to rise out of these ashes and it has the chance to be big and good and lead the world again.

I don't think people realize as you travel around the world you can see Cessnas, Beeches, Pipers, you can see them in Pakistan, you can see them everywhere. They are still flying these aircraft; we really built a good product. The average age of the fleet now is 27 years old. The aircraft has gone through three owners, two engines, and it is still flying.

I saw a 1946 Air Knocker the other day down in Sky Park. This is what I started flying in when I was 18 years old and base planes are still running. So, they built awfully good aircraft in those days.

Now we see our system come along and what has happened to us? I know when I was first out of college I went to work for a large insurance company and I negotiated fatalities and serious injuries, played God, and put dollar amounts on people's bodies. When I look back on that, it was very easy in automobile accidents to determine liability. We could all say, here we have somebody who ran a red light, somebody got drunk. It was very easy to do. I was handling 70 or 80 fatalities a year. I can recall only one case in that length of time when someone included as a defendant the manufacturer of the automobile. No one did that.

We predicated the outcome on liability. Now we are talking light aircraft. But we don't have that advantage. We have someone that gets his ticket out here in Virginia and he wants to take his family and fly to California. He has 40 hours. He knows nothing about instrument flight rules. He goes to the Colorado Rockies and he finds himself in the mountains somewhere. It is a trying situation. It is a tear-jerking type of thing.

The FAA, who investigates these things in much more detail than automobile accidents are ever investigated, says that 93 percent of accidents are caused by pilot error. He doesn't know anything about flying on instruments and probably his panel is not sufficient for him to do it if he did know how. And poor judgment comes around.

So, in 93 percent of these accidents, the pilot fouls up. But what do we do? Do we get back into the idea of liability? No. We get into sympathy and we hear a great picture come about of the sympathy of the man and his family and all that type of thing, and somehow we go back to the day that plane was built, and it could have been built in the 1940's, or the 1930's, and passed through two or three owners. So we have missed the point.

Out of that, what do we have? I am not blaming the families. Basically, the plaintiffs attorneys have brought this industry on its nose.

What are we asking today, Mr. Chairman? We are merely asking at this point—and I am a great believer that the marketplace should be the thing to cure most things. However, in this instance, Congress has to step in and say, "Somehow we have to bring this industry back and give these people a chance to start growing."

You know, Mr. Chairman, if we had this problem with Chrysler, Ford, and General Motors, they would have been to the Congress years ago saying, "You have got to save the biggest industry in America, because we are getting killed." If you went back and looked at every courthouse and reviewed the cases that are filed, and if Chrysler, General Motors, and Ford were the first defendant in every one of them, we would be in pretty bad shape, if I respectfully may say so.

So I personally feel that the bill that myself and Mr. Glickman are working on, and many people are pushing—it has over 290 cosponsors, and the companion bill in the Senate has passed 91 to 8—is the type of thing Congress can do, to do what the gentleman from Kansas talked about: Jobs. People can be proud of working for these companies that are willing to build aircraft and we can again take the lead in the world.

At one time there was no question we were the leaders, the Cessnas, the Beeches, the Pipers, and all the others were the leaders in the world. Now we are seeing people come from other countries who are taking it over.

So I would just say, Mr. Chairman, we would urge you to take a close look at the legislation we put in and also the one the Senate has put in. I have gone into detail in my statement. As you told me earlier, I won't bore you with all of that.

I appreciate the opportunity to speak to you for a few moments.

[The prepared statement of Mr. Hansen follows:]

STATEMENT OF JAMES V. HANSEN
FIRST DISTRICT OF UTAH
MAY 12, 1994

Mr. Chairman, I am here today to address an important piece of legislation regarding the aviation industry. I appreciate the opportunity the Subcommittee has given me to testify as a sponsor of H.R. 3087 and supporter of S. 1458.

The bill was introduced last September by Dan Glickman and myself. At that time, we had 150 cosponsors and today, 294 Members of Congress have endorsed it. With this overwhelming amount of support, I believe Congress should be given the opportunity to take action on the proposal and provide some relief to an enterprise which is vital to our economy. It's time for us to take a serious look at the repercussions an indulgent plaintiffs bar has created for the aviation industry. These vital American businesses once led the international market, provided hundreds of thousands of good jobs, and created a lifelong legacy for private aviation.

Recently, a trial lawyer approached me and began a long explanation about small aircraft manufacturers and their negligence. He argued that they should continue to be held accountable for every aircraft ever made, for as long as it will fly, because of the inferior nature of the product. As I listened to him, I tried to find a reasonable explanation for his argument, but I couldn't.

The rationale just doesn't line up with the facts. We know: The average age of the single engine fleet is 27 years, I have a friend who flies an aircraft that is over 30 years old. If he wanted to buy that plane today, it would cost more for liability insurance than it would to buy the aircraft; As the fleet ages each year, few single-engine aircraft are made to replace them -- sales dropped to record lows in 1992; and, we also know 93 percent of small aircraft crashes are caused by pilot error -- not design or production default. What other product in the world gets an average of a 27-year return? There isn't one. To me, the argument that manufacturers should be held accountable for their shoddy work lacks any credibility.

Yes, the manufacturer should be responsible to design and build a quality product because the consumers -- pilots like myself -- deserve a reasonable amount of protection. We expect this of auto makers and others who market products which have the ability to take our lives. However, I believe 15 years is a good standard and I agree with the Senate bill which raised the ceiling to 18. The manufacturer has adequately proven a quality product was built after 18 years have expired.

Single-engine aircraft are the backbone of the general aviation fleet. The research, development and new technology in the industry historically has brought the United States jobs, billions of dollars to our economy and a reputation of excellence in this business. My own state of Utah, which isn't home to a major manufacturer, earns over $86 million annually because of the industry. Over 240 million dollars worth of economic activity is directly linked to general aviation; and up to 4,000 jobs are associated with general aviation.

Utah is just one example. If we really want to represent our districts, put people back to work and revive valuable companies in each of our states, passing this bill is the smartest thing we can do as legislators.

Although a multitude of improvements have been made to ensure small airplanes are safe, liability costs remain the largest single line-item for the manufacturers. With no limit to their liability, they cannot predict the lifelong cost for one airplane. In order to prevent the complete obliteration of business, these companies have been forced to cut the greatest financial risk from their budget - the piston driven plane.

Because the industry is being held hostage by about sixteen law firms who persist in suing every time an aircraft crashes -- regardless of the cause -- production has stopped, workers have lost their jobs and private pilots no longer have access to affordable, U.S. made light aircraft. The majority of lawsuits filed today aren't predicated on liability, they rely on jury sympathy. We have created a sad situation for an American born industry and it is time to correct it.

I strongly believe the aviation industry deserves Congressional assistance. Solid U.S. companies are being punished for building quality products that last for decades. They are forced to pay hundreds of thousands of dollars to prove their aircraft is sound - although it may be well over 25 years old. In addition, over 50 percent of U.S. jobs have been lost in this industry and private pilots can no longer afford to purchase a new plane. We have a responsibility to do something now.

I encourage this Subcommittee to take a serious look at the Glickman/Hansen bill, and Senator Kassebaum's bill, S. 1458. With a vote of 91 to 8 in the Senate and 294 cosponsors in the House, it is evident the measure should be allowed on the Floor. We aren't asking for anything drastic, just a reasonable amount of relief. The bill does not create a federal standard of liability, will not limit the jurisdiction of any state court and does not attempt to change existing state laws with regard to joint and several liability, comparative negligence, or punitive damages. I do not believe this bill solves all of the aviation industry's problems, but it will create a balance in the market.

It is time for Congress to fully support the foundation of the entire aviation industry and give jobs back to deserving Americans. Support for H.R 3087/S.1458 will hand the aviation industry back to this country and put thousands of people back to work -- without costing the government a penny. Mr. Chairman, I thank you and the Subcommittee for your time.

Mr. BROOKS. Thank you very much.

Without objection, your statement will be put in its entirety.

Mr. HANSEN. Thank you.

Mr. BROOKS. Your statement was good. I have seen a lot of good statements, but your synopsis was exceptional that you attached to it. It was a very nice outline of it. It was very well done. You should be commended for that.

Mr. HANSEN. Thank you, sir.

Mr. BROOKS. I hope we can all restrict our comments to 3 to 4 minutes. It would help get on with the consideration of that which you are so interested in doing.

Congressman Peter DeFazio is a Democratic Member from Springfield, OR. He represents Oregon's Fourth District, and he is a member of the Committee on Public Works and Transportation. He has developed a keen interest and expertise in general aviation issues. That means he agrees with you all. The gentleman is recognized.

STATEMENT OF HON. PETER A. DeFAZIO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. DEFAZIO. Thank you, Mr. Chairman.

I appreciate the opportunity to testify before the committee, and certainly appreciate the perseverance of our friend from Kansas, Mr. Glickman, on this issue. Probably for him it is a little like the spotted owl issue is for me in the Northwest. It is something that is key to a local issue and an economic issue.

I would like to maybe approach this a little bit differently, and offer an alternative that I see as having a possibility. I don't think as a member of the aviation committee, having sat through hearings on this issue, that it is quite as simple as the only problem being experienced by the manufacturers of small single-engine light aircraft in this country.

I believe there are a whole lot of issues. There are management issues with some of the firms, there are issues of changes in technology, changes in the economy, changes in the tax law, changes in travel habits, and, yes, there are problems regarding liability. But given the mix of things, I think first off as a member of that committee there are some other changes and some other ways this needs to be addressed.

But secondly, I would like to suggest that the statute of repose is perhaps using a little bit of a blunt instrument where something a little more defendant might resolve the predominant part of the problem.

My problem with statute of repose is that it is so definitive. If something happens 14 years, 364 days, if you have a 15-year statute of repose you have recourse against the manufacturer. If it happens to be 15 years one day, you don't. Can we predict that carefully, you know, the useful safe life of a product or what the manufacturer's participation in litigation should be?

The useful safe life approach seems to me to be something that could offer some merit here and could offer substantial protection to manufacturers. The idea being that you set a useful safe life, say, at the same number of years or a different number of years, whatever the committee in its wisdom might choose, and say this is the predicted useful safe life of these particular products, and after the useful safe life has expired, there is substantial protection from litigation, particularly substantial protection from capricious litigation, which is what we heard a lot on the aviation committee from the manufacturers.

At that point after the useful safe life, there is a higher standard for litigation, whether you use preponderance of evidence or a standard of clear and convincing. Then to have recourse back again to the manufacturer, you would set a threshold that would make it much more difficult to just drag them in because they have deeper pockets or because they can't find anyone else to provide for damages in a particularly emotional instance, as described by the colleague who preceded me.

It is not a new idea. Washington State has adopted a statute. I understand Kansas has statutes that provide for useful safe life. And I would urge the committee to consider a useful safe life alternative to the hard statute of repose.

I thank the chairman.

[The prepared statement of Mr. DeFazio follows:]

STATEMENT OF THE HONORABLE PETER DeFAZIO
BEFORE THE
SUBCOMMITTEE ON ECONOMIC AND COMMERCIAL LAW
COMMITTEE ON THE JUDICIARY
MAY 12, 1994

Thank you Mr. Chairman for the opportunity to testify before your subcommittee today. I appreciate your willingness to hear my thoughts on this very important subject.

First off, I would like to commend Mr. Glickman for his tireless work on this issue. He has toiled long and hard to advance his legislation to this point and whether you agree with him or not, you have to give him credit for prodding the House to deliberate this matter.

I'm not here to malign the general aviation manufacturing industry or the product liability reform legislation it supports. Clearly, the industry has its problems and they deserve the attention of Congress. But I would suggest many factors have contributed to this downturn, not just the prohibitive cost of liability insurance. I want to propose an alternative to the statute of repose legislation being considered today, one that I believe has merit.

As a member of the Public Works Subcommittee on Aviation, I have never felt comfortable supporting a statute of repose for general aviation manufacturers. It always seemed like a simplistic way to deal with the very serious problems facing the industry.

A 15 year statute of repose is clearly an arbitrary and blunt instrument. It totally cuts off an accident victim's access to court because of the product's age. If your accident happens to occur 14 years and 364 days after the point of sale, you can seek legal redress in the courts. But if your accident occurs 15 years and one day after the point of sale, you are out in the cold. No consideration is given to the way in which the product was stored or any other relevant historical information. That seems like an inappropriate way to judge the unique nature of general aviation products.

In addition. I was skeptical of the remedy's purported benefits, especially given the grave consequences facing future victims. It didn't seem worth the risk.

Recently, the "useful safe life" concept was brought to my attention as a way to strike a balance between these competing demands. Under this approach, a general aviation manufacturer or seller would be subject to liability primarily if an accident occurred within the "useful safe life" an aircraft or part. The term "useful safe life" would be defined as the period beginning at the time of delivery and extending through the time during which the aircraft or part would likely perform in a safe manner. If an accident occurred after the "useful safe life" had expired, then a presumption would arise in favor of the manufacturer. This presumption could only be rebutted by clear and convincing evidence.

This approach strikes me as sensible. The decision to grant immunity to a manufacturer would be made in a sober and informed fashion, and it would be based on a number of interrelated and relevant factors. It also seems like this type of rigorous examination would discourage any frivolous lawsuits.

Certainly, this is not a new idea. The states of Kansas and Washington already employ this type of system. Before we rush headstrong into a statute of repose, I would urge this committee to look at this proposal. I think it bears serious consideration.

Mr. BROOKS. Thank you very much. Congressman, I appreciate your eloquence.

All statements will be in the record without objection.

Our next witness is Mr. Jim Lloyd. He is a former Democratic colleague from California. He represented his district with distinction from the 94th through the 96th Congress. He was flying airplanes when he got here, he flew them while he was here, and he is still at it. He is a retired naval aviator. He served in the Navy from 1942 to 1963.

It is good to see him back. I wondered if we were ever going to see him back, because he liked when he was in Congress to put the pressure on the Air Force and Army and Marine Corps to fly all the hottest airplanes. It is a wonder he didn't blow himself up, flying all those instant-decision airplanes. But he survived it, and I am delighted to have him back.

STATEMENT OF HON. JAMES F. LLOYD, FORMER U.S. REPRESENTATIVE FROM THE STATE OF CALIFORNIA

Mr. LLOYD. Thank you very much, Mr. Chairman. It is a pleasure to be back with you and to be here with my good friends up on the dais there.

As you said, my statement will be submitted for the record. I have a few additional comments for the subcommittee today

I am very much concerned with the great lack of reasonably priced general aviation aircraft today. It is important to all of us who fly. For instance, I have averaged in the last 5 years, Mr. Chairman, 236 hours a year of flying. This is quite a bit for general aviation.

I have participated in all levels of aviation, as you mentioned—military, as well as commercial. The largest aircraft I have flown is a 747 and the smallest was an RV–4, a home-built. That is a point that I think people are missing. Aircraft are being built in the United States, and they are being built as home-built aircrafts. The controls we have over the construction of these aircraft, compared against the standards of what is expected of Cessna or Piper or Mooney today, can be very cursory.

I think this is important because we are now bringing aircraft onto the market that really don't have the same responsibility requirements that your aviation manufacturers have had in recent years.

The problem is that people assume that product liability applies only to one phase of aviation. In an aircraft, not only is the whole airplane a function of product liability, but the altimeter can be a function of product liability, the generator or alternator can be a function of product liability, and the electric fuel pump is a function of product liability. Every part on an airplane is an individual function for liability. And if you are flying helicopters, liability is as applicable to them in the same way.

I would remind you that every part on a helicopter, individual blades, individual tail rotors, the engine itself, and the parts in the airframe are all subject to product liability.

I had a helicopter, a 500, which was then built by Hughes, and I thought that was a grand idea until I figured out how much it was really costing me to operate it. I had to get rid of it. So I went back to a 182 and now I have a Comanche—a Piper Comanche. However, my aircraft is now 34 years old. If something had happened to me on the way back here, and I did fly my airplane across the country this week, if something had happened to that aircraft, Piper is still liable.

It is interesting to note that my aircraft is now 10 miles faster in capability than it was on the day it came out of the factory. This is primarily because of all of the modifications I have performed on it, gap seals, et cetera.

In addition, the instrument panel is entirely different. It has been modernized. I also changed the hard lines, oil lines and gas lines, into more flexible lines. My aircraft originally was manufactured with pipe fittings. I am not sure you can even buy some of the fittings which originally belonged on that airplane today on the market.

There is an after market for parts, but I don't think Piper has these parts in the pipeline anymore. In other words, many things have changed on my Comanche, but Piper is still liable for that aircraft and responsible to me for that aircraft. This is wrong and it should not continue.

I think the bill that Mr. Glickman has sponsored is a reasonable approach. Frankly, my attitude is very simple. If we can't make a liability decision regarding the building of an aircraft within 7 or 8 years, we are not doing the job. But if you have to settle for 15 to 18 years of manufacturers' liability, I will settle for that. I will settle for almost anything if we can just change the present situation.

As is, we are destroying general aviation in the United States today. I am mightily concerned about it. I want not only my son to fly, and he does, but I also want my grandchildren to have that same opportunity. We have the opportunity to assure them that chance here today.

Thank you very much, Mr. Chairman. I appreciate this opportunity to testify on this very important aviation legislation.

[The prepared statement of Mr. Lloyd follows:]

STATEMENT BY JIM LLOYD

Mr. Chairman, and Distinguished Members of the Judiciary Committee: I wish to thank you for the opportunity to appear before you on behalf of those of us who participate in general aviation.

To give you some information on my background, I have in excess of 13,000 hours of flight time, and I have flown more than 100 different kinds of aircraft, from the 747 as the largest to the RV-4 (a homebuilt) as the smallest. I have also owned two aircraft, a Cessna 182 and a Piper Comanche PA-250. In addition, I am a qualified glider and helicopter pilot. Lastly, I have flown not only for the United States Navy, but also with the U.S. Air Force, the RAF, the French and the Israeli Airforces.

Over the years there has been a frightening development in the area of general aviation. A once vibrant industry is dwindling and dying. What is the cause for its demise? The answer can be found in two words -- product liability.

To show you what I mean about product liability and its impact on aviation, I would like to draw an analogy. I am the owner of a 1966 Ford pickup truck. Now I am sure that there is no one here who would believe that in the event of an accident I would have a legitimate complaint against Ford Motor Company 28 years after the manufacture of this truck. In fact, in California this truck is now considered an antique.

The other side of this analogy is that I also have an airplane, a Piper Comanche, which is six years older than my truck. This is the plane that I flew here from California to be present at this hearing today, and may I add, safely so. However, do you know that if in the event I had had an accident on my way to Washington, Piper Aircraft would have been liable, and my wife would have been entitled to seek financial remuneration in the courts, if it were determined that the aircraft had failed to perform as it was originally designed?

Let's examine that design for a moment. If you were to match the aircraft to the original design and specifications, you would find a great many differences from the aircraft I flew here and the one that rolled out of that assembly line at Lock Haven, Pennsylvania 34 years ago. The aircraft currently has a top speed of approximately 174 MPH in a normal 75% cruising speed configuration. That is over 10 MPH faster than that brand new aircraft of 34 years ago. The current aircraft has different gap seals, wing tips, exhaust system, windshield, and last but not least, it has a totally different instrument and electrical system. As if those were not enough changes, all of the original pipe fittings have been replaced by A/N fittings to accommodate flexible hoses on the oil and fuel systems. The original fuel and oil lines were of hard metal tubing, as opposed to the modern flexible tubing now installed, which incidentally make the aircraft a great deal safer.

As to the engines in these two modes of transportation of which I am the proud owner, let's go back to my truck for a moment. I am sure most of you would readily agree that you would not want an engine in your car similar to the 351 cubic inch engine capable of an incredible 12 miles per gallon, which is in my truck. As a matter of fact, if I remember correctly, when I was here in Congress, we were establishing laws that would mandate far more efficient standards of fuel economy and exhaust pollution. As a result of that legislation, today's modern automobile engines controlled and monitored by computers are a far cry from the 1966 engine in my truck.

Now let us look at the engine in my Comanche. It is a Lycoming O-540, designed in the mid 1940's with no automatic monitoring devices, fuel control or exhaust pollution reduction equipment. Although you cannot buy my airplane new today because it is no longer in production, you can purchase an aircraft essentially the same as my aircraft in both speed and weight. This aircraft, which is manufactured by the French, has almost the same engine that I have in my airplane. You might ask, "Surely there has been some major change in small aircraft engine designs since 1945? The answer sadly is "not so." The "why not?" is because of product liability.

Even though engine designs in automobiles have made great strides, Lycoming and Continental engines have remained the same lo these many years. Because of product liability, Lycoming and Continental have been sued successfully so many times as to force the costs of engines to be twice the cost of what my total aircraft cost originally. Today you can purchase a 540 engine for about $30,000. However, the actual value of the metal, construction, pistons, bearings, the total of the engine (minus any product liability costs) would be somewhere in the neighborhood of $4,000. In buying this engine, you are not paying for just one product liability, but a multiple of liabilities. There is a product liability on the magnetos; there is a product liability on the alternator, there is product liability on the fuel pump (both the engine driven fuel pump and the electrical fuel pump), and there is product liability on the carburetor. If you put a real value -- sans product liability -- on an airplane similar to mine (which weighs roughly 1900 pounds), you would probably evaluate the engine at $5,000; the aluminum (roughly 1,500 pounds at $2.00 per pound) at $3,000: and all the miscellaneous other aircraft equipment (wheels, propeller, alternator, battery, cable, etc.) would be about $3,000. On top of this you would have to add the manhours of construction (averaging out at about 1,000 hours at a cost of $20.00 per hour per man). Furthermore, you would have to include administrative and advertising costs, which with everything totalled would give a basic selling price of about $30,000. However, unfortunately, this is today's market, and you will be looking at a selling price in excess of $150,000. Why this $100,000-plus difference? The answer again . . . product liability. Obviously these figures are approximate, but they are definitely in the ballpark. I also know that you have received, or will receive, a great many more descriptive estimates of the costs of product liability then what I have presented.

If the foregoing has any validity, then it is time that we address product liability in a reasonable manner. Just as we have treated automobiles with limitations of liability, so too must we do the same for general aviation manufacturing. I have taken the time to speak with a friend of mine who is a trial lawyer and pilot. His name is Rob Harrison, and he has participated in aircraft litigation pertaining to product liability. He has indicated to me that it is essential that we come up with more responsible action. He suggested, and I concur, that we reduce product liability to a limitation of 15 to 18 years. If these parameters were used, the majority of the current fleet of general aviation aircraft in service would be excluded from product liability litigation.

I understand that the intent of this committee is to give due consideration to the rights of aircraft owners and operators. I submit to you that what we have suggested in time limitation will more than insure protection to those who are deserving of their day in court. The point I wish to make here is that the person who has been involved in an aircraft accident certainly is entitled to a legal review; on the other hand, those people who build and develop airframes, aircraft engines, radios and navigational equipment, etc., must also have the same protection of the law. These people in aircraft development are the very foundation of private enterprise. and in view of our current general aviation status, it is imperative that we now take steps to insure survival of a sagging U.S. industry in a competitive commercial world. The U.S. has always been a forerunner in the aviation field. Please, let's not give up any more of it!

I firmly believe that anyone who deserves consideration in the courts will be afforded the opportunity to present his or her case within the limits of what we have proposed here--15 to 18 years. I know that I, as a general aviation pilot, will feel that there is a great deal more fairness if product liability is limited. I also believe that the majority of pilots, and certainly the plane manufacturers will be a lot happier in the continuing operation of the older fleet, and the new fleet that will be generated as well.

I welcome the opportunity, Mr. Chairman, to respond to any questions. In closing, may I say this hearing is a long-awaited-for opportunity for general aviation, and I would like to emphasize my personal appreciation for the consideration you have given us.

Lloyd
Internetworking

May 8, 1994

Honorable James F. Lloyd
3240 Whitebirch Drive
West Covina, CA 91791

Mr. Lloyd:

I am the president of a small, high-tech company located near Sacramento, California. In addition to our skilled personnel, our company depends on two things: our connection to the Internet and our two general aviation aircraft. Our four-place single-engine aircraft make it possible for us to survive and grow by making it possible for us to serve clients over a very large geographic area (California, Nevada, Oregon, Idaho, and Washington). Simply put, without general aviation, our company would not exist.

Because of our dependence on general aviation, I am extremely concerned with the lack of reasonably priced new general aviation aircraft and with the lack of innovation and technical advancement of the general aviation industry. I personally attribute these lacks on the high cost that the aircraft manufacturers must bear to protect themselves from unreasonable litigation in the area of product liability.

For instance, we operate a Piper Comanche that was manufactured in 1959. The fact that most of these aircraft are still flying safely is a tribute to Piper's excellent design and engineering. But should one crash and someone determine that there might have been a flaw in the design, Piper Aircraft Corporation is *still* liable for damages. Certainly the aircraft manufacturers have learned something in the 35 years that this aircraft has been flying. I would like them to be able to create new and improved designs without having to constantly worry about liability for an old and aging fleet of aircraft.

But the aircraft manufacturers are in a "Catch-22" situation here. If they make improvements that increase performance and or safety, those improvements may be used against them during litigation to show that the manufacturer "knew" of a flaw in the original design. So aircraft and engine manufacturers avoid making improvements.

Now I do not mean to imply that aircraft manufacturers should not be held responsible for flaws in design or manufacturing that result in injury or death. On the contrary, pilots need reasonable protection and a means of compensation for losses incurred as a result of a manufacturer's negligence. On the other hand, if there are no significant problems discovered after, say, 15 years, I think that we can safely assume that the aircraft is question is indeed safe and sound. At that point in time failures in components and systems should be considered to be a function of old age and not a function of faulty design.

Aviation has always been an area where the United States has demonstrated technical prowess and achievement. But today there is precious little general aviation industry left in the US. Other countries have become the general aviation leaders. Is this because there is no innovation in US aircraft design? I think not. All one has to do is look at the tremendous advances demonstrated by the kit plane and experimental aircraft "industry" that has grown up here to fill the vacuum left by the general aviation manufacturers who have curtailed aircraft production. Product liability in the United States has all but killed the general aviation industry in this country.

Mr. Lloyd, please do what you can to make the Congress aware of the product liability problems faced by general aviation manufacturers in the US. My company *will* be buying aircraft in the future. How nice it would be if we had the option and opportunity to "Buy American."

Sincerely,

Brian Lloyd, President

Mr. BROOKS. Thank you very much, Jim.

I think that you all have made a contribution.

Gentleman, I appreciate you all being here. And we will go on to our next panel. Thank you very much. Two hundred and thirty-six miles a year, Jim?

Mr. LLOYD. Two hundred and thirty-six hours a year, Mr. Chairman.

Mr. BROOKS. Boy, that is a lot.

Mr. LLOYD. Yes, sir, that is a lot. More than most, I might add.

Mr. BROOKS. I am asking our public witnesses to appear at the witness table in a panel to testify on H.R. 3087. I would request each witness summarize his statement within 5 minutes. Your statements will be placed in the record, every pristine word. The record will remain open for additions to the statements.

The first witness is Russell W. Meyer, Jr., chairman and chief executive officer of Cessna Aircraft, in Wichita, KS.

The next witness is Phil Boyer, president of Aircraft Owners and Pilots Association from Frederick, MD.

The third witness is John Goglia, who will testify for the International Association of Machinists and Aerospace Workers.

The fourth witness is Charles T. Hvass, Jr., an attorney from the firm of Hvass, Weisman & King in Minneapolis. He has an active aviation law practice.

Next is Robert Creamer, executive director for Illinois Public Action, who will testify on behalf of Citizen Action, Consumers Union, and Public Citizen.

The final witness is Dr. Ronald O. Stearman. He is professor of aerospace engineering from the University of Texas at Austin. He has 30 years of teaching experience in aerospace engineering and engineering mechanics and has been a frequent industry consultant as well.

Gentlemen, we are delighted to have you with us today. We will start with Mr. Meyer.

STATEMENT OF RUSSELL W. MEYER, JR., CHAIRMAN AND CHIEF EXECUTIVE OFFICER, CESSNA AIRCRAFT COMPANY

Mr. MEYER. Thank you very much, sir. I appreciate this opportunity to testify this morning.

I would say that we are very much gratified in our industry by the strong support that we received for this legislation. I hope my comments will be helpful in your determination. I look forward to answering any questions that you may have.

As you suggested, rather than go through my statement, I will take this opportunity to emphasize several issues I believe are particularly relevant to your evaluation of this statute of repose.

From a personal standpoint, I have been in the aviation industry for more than 40 years. I took my first flight in a Piper Cub in Davenport, IA, in 1942 and I was hooked. I learned to fly in the Air Force. I had the great privilege of flying fighters in both the Air Force and the U.S. Marine Corps. And I have flown ever since. I have 13,000 flight hours. I am type rated in every aircraft that we manufactured. I have been very lucky. Aviation has been both an avocation for me and a vocation.

I love this industry. It has been my life. My oldest son flew 50 combat missions in Desert Storm. My youngest son now flies F–15's. So aviation has been important to me. It has been important to our family.

I have been very fortunate. I have been chairman and chief executive officer of Cessna for almost 20 years. During that time, I have been involved in the development of more than two dozen new aircraft. I have been chairman in good years and chairman in tough years. I was there when we built 9,000 airplanes a year, and I have been chairman for the last 8 years when we have built zero single-engine aircraft.

I was chairman when we employed 20,000 people at Cessna in 1981. I was chairman in 1986, when we employed 3,000. So others can speculate on why we made certain decisions at Cessna. But there is only one person that can tell you exactly why we have made those decisions. And I am that person.

I would like to start this morning by emphasizing several issues, and I would like to start with safety. There is no question that safety is the number-one priority in aviation, and I can tell you that it is absolutely and unequivocally the number-one priority of Cessna.

We have built almost 190,000 airplanes in the last 67 years, which is far more than any other manufacturer. We used to be very proud to say, if you were anywhere in the world and you looked up in the sky and you saw two airplanes, chances were very good that at least one of them was made by Cessna.

We made every model of aircraft, from two place trainers to high-performance business jets, and in practically every category, and the industry keeps very good records. Statistically, every model Cessna had a safer record than any other manufacturer.

We were very, very proud in 1986, when Cessna was awarded the Collier Trophy for aeronautical excellence. The first winner of that trophy was Orville Wright. In the 80 years they have given that trophy, only one general aviation company has won the award, and it was Cessna. We won it for the perfect worldwide safety record of 1,400 citations operating in 63 countries in 1985. By the way, we have that same record in 1986.

We track the operating safety record of every airplane that we have ever built, and if there is a safety problem, a serious one, we will ground the fleet without hesitation until that defect is cured. In my 20 years we have done that twice. We cured the problem, and those airplanes are flying safely.

So anyone who testifies to this committee that somehow or other the threat of product liability is a positive factor in the safety of our industry, is wrong. They are wrong because, as I said, safety is the number-one criterion in our business with or without product liability.

Second, as we should, we go through an extensive, comprehensive certification program with the Federal Aviation Administration. It takes years to develop and certify an aircraft. The average in Cessna is 3½ to 4 years. We fly that airplane thousands of hours with test pilots in every conceivable situation until we are certified.

And finally, I would say that we would not have been successfully in business for 67 years and sold almost 180,000 aircraft worldwide if we did not build a safe product. In fact, I would say to you that product liability costs are detrimental to the safety of aircraft manufacturing. And I say that because from 1974 until 1985, we invested in Cessna every year on average $20 million in research and development on single-engine aircraft.

Since 1986, we have spent zero dollars in research and development on those single-engine aircraft. Parenthetically, during that same period of time, we have spent $20 million a year, $160 million in the last 8 years, defending lawsuits involving aircraft as old as 47 years.

Second, you have statements from a number of witnesses today who claim that we stopped the production of single-engine aircraft because of taxes or the economy or something wrong with the market or other issues. I can tell you that that is absolutely untrue. I personally made the decision to stop single-engine production in 1986. It was the most difficult decision of my life. And I made it solely because the unlimited cost of exposure to product liability made it impossible to calculate the cost when we manufactured the aircraft.

I personally made the decision to shut down the production lines and it broke my heart. It cost thousands of people their jobs, many of them friends and many of them 30- and 35-year employees who had dedicated their careers to Cessna and the industry. It cost us a relationship with a thousand dealers around the world with whom we had worked for years, servicing our customers.

We lost our worldwide leadership. Up to 1986, we had 65 percent of the world's light single-engine market at Cessna, and there may be companies with that market share. I don't know of a company in this country in any industry that has 65 percent of the world's market. And we gave it up for one reason: the unlimited cost of product liability.

We have not built a single-engine piston aircraft in 8 years, and we will not because we cannot restart those lines without some type of limitation. We have pledged at Cessna to reenter this business the day this legislation is enacted. And I am proud this morning to make that same pledge to this committee and to briefly summarize the benefits of restarting those production lines.

Most important is the creation of jobs. And I am talking about excellent jobs. The average wage, the hourly wage of employees in our industry is $13.31. Our best estimate, if this bill is passed, is that within 5 years at least 25,000 jobs will be created in this industry. And those aren't just jobs in Kansas. They are not just jobs in manufacturing. They are jobs in every one of the 50 States in selling and supporting these airplanes. It has a wonderful domino effect.

Most important, we will once again be able to provide jobs for young men and women who are interested in careers in aviation. When I first became chairman of Cessna in 1975, every year we interviewed at dozens of colleges and universities and vocational schools, and we hired hundreds of young people, not just engineers. We hired them to be sales reps, service reps, work in our finance department, because they wanted to make their career in our industry.

We haven't hired any of those young people since 1986. And nothing would make me prouder or happier if this bill is passed than to once again bring young people into an exciting and rewarding industry.

Because this is such an important jobs issue, we are also proud that the International Association of Machinists, and you will hear from John Goglia shortly, is so supportive. Trial lawyers have always been very quick to point out the victims of general aviation accidents, and it is unfortunate anytime there is an accident. I would suggest this morning that we might give some consideration to the real victims of the product liability environment: the families of the 100,000 people who have lost their jobs in the last 10 years and the families of thousands more who will not have that opportunity if this legislation is not passed.

As Congressman Glickman said, this is not tort reform. This is a jobs bill. And it is a leadership bill. Ever since the Wright brothers' first flight, the United States has been the world's leader in aviation. Up until 1986, U.S. manufacturers built 93 percent of the world's aircraft. We exported 30 percent of our products year after year. It was great for our balance of trade.

Without that production, we have lost their sales, we have lost the balance of trade, we have lost jobs, we have lost our leadership. One of our highest priorities at Cessna in the 1970's was to work with colleges and universities around this country and practically every university, including the Air Force Academy, used our products. We are very proud of that.

We are no longer able to provide those aircraft, and it was very disappointing to me as a citizen and as a member of this industry that the Air Force Academy recently purchased some English-manufactured aircraft, and the two largest aviation universities in this country just purchased a fleet of French-manufactured aircraft.

So this legislation will not only create jobs. It will enable us to regain our leadership. That is why we have such extraordinary support. Every single aviation consumer organization in this industry unanimously supports this legislation. The IAM supports the legislation. The Air Line Pilots Association supports it.

I was a member of the Airline Commission last year, and this, among all of the issues that we recommended, was one of the few unanimous recommendations made by the Airline Commission. That is why the Senate passed this bill, 91 to 8, and that is why we have 294 cosponsors in the House.

Look, we are doing fine at Cessna. We have concentrated our resources on business jets in the last 8 years and we are the world's leader in that industry, too. We are making very good money, as has been pointed out by one of the witnesses you will hear from. We are proud of that.

We are not here this morning because we have lost any money. We are here because we have lost an important industry. But you have a chance to bring it back to life, and it may in fact be our last chance. In my view, we just can't afford to lose this industry.

As I said when I started this morning, I love aviation, and in my view passage of this bill is the most important single event since the Wright brothers' first flight in 1903. And as we approach the end of the first century of that flight, please, please help us pass this bill and give U.S. companies the tools they need to regain our world leadership in this important industry.

Thank you very much.

[The prepared statement of Mr. Meyer follows:]

Statement

Russell W. Meyer, Jr.

Chairman and CEO

Cessna Aircraft Company

Before the

House Judiciary Committee

Subcommittee on Economic and Commercial Law

on

H.R. 3087 and S. 1458

The General Aviation Revitalization Act

May 12, 1994

Mr. Chairman and members of the Subcommittee. Thank you very much for scheduling these hearings and inviting me to testify. We are gratified by the strong support for this legislation and I look forward to answering questions following my prepared comments.

It is important to emphasize that we are not here this morning to discuss tort reform. We are here to talk about the rebirth of an industry which has been essentially destroyed by the unlimited cost of product liability applicable to general aviation aircraft, particularly piston engine aircraft.

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Most important, we are here today to discuss an opportunity to create thousands of jobs -- the kinds of skilled, well-paying jobs that we desperately need in this country -- simply by establishing a highly conservative limitation on the length of time an aircraft manufacturer is held liable for its aircraft.

I would urge this committee to report S. 1458, which passed the U.S. Senate by a vote of 91-8. This bill is a compromise bill reached and agreed to by Senators Kassebaum and Metzenbaum. The statute of repose was extended from 15 to 18 years, and certain other exceptions were included in the bill. H.R. 3087 is a 15 year statute and has the co-sponsorship of 290 House members. While we prefer the shorter statute, we strongly support S. 1458 as passed in the Senate and urge its adoption by your committee.

It is also important to emphasize that we are not dealing with speculation this morning. We are dealing with facts. For example, the following brief statement is an accurate historical summary of the destructive impact of product liability on the general aviation industry:

1 - From 1965 to 1982, U.S. general aviation manufacturers sold an average of 13,000 piston engine aircraft each year. In 1993, the industry delivered slightly over 500, the lowest number since World War II. For the first quarter of 1994, piston shipments have again declined.

2 - Speaking strictly for Cessna during the same time frame, we sold an average of 6,500 piston aircraft each year. Solely because of the unlimited cost of product liability, we stopped building these aircraft in 1986.

3 - From an economic standpoint, the job loss has been staggering. More than 100,000 jobs have been lost in general aviation in the past 10 years.

4 - Again speaking strictly for Cessna, we employed almost 15,000 people in 1981. When we exited the single-engine piston aircraft business in 1986, we had fewer than 3,000 employees, all of whom were working on our Citation business jet and Caravan utility aircraft.

5 - Ten years ago Cessna had more than 1,000 dealers worldwide engaged in selling our aircraft. Today we have zero.

6 - Throughout the 1965-1982 time frame, we sold at least 30 percent of our products outside the country, contributing substantially to U.S. balance of trade.

7 - From 1965-1982, U.S. companies produced more than 95 percent of the world's general aviation aircraft. Obviously that leadership has been destroyed and the economic benefits lost.

8 - When we were actively producing piston aircraft at Cessna, we provided job opportunities to young people not just in manufacturing, but also in engineering, marketing, product support, flight training and a wide range of technical services. We also provided hundreds of aircraft each year to dozens of colleges and universities with aviation departments. Today we provide zero.

9 - Even though we have not produced a single-engine aircraft for more than seven years, we continue to be sued in almost every accident involving one of our aircraft, regardless of cause. In over 40 percent of these cases, during the past five years, the aircraft were more than 15 years old.

10 - From 1965-1982, we invested $20-25 million every year at Cessna in research and development, an investment which created

new and improved aircraft and which created jobs. Since 1986, we have stopped this investment in piston R&D.

But coincidentally, we have spent $20-25 million each year to defend hundreds of product liability cases. I hasten to point out that only a very small percentage of this $150 million was paid to claimants.

11 - During its first 15 years, on average, a general aviation aircraft accumulates 6,000 flight hours, has at least three engine overhauls and several owners, which is clear evidence of the integrity of the aircraft.

With that information as background, let me direct my comments to the benefits to both the industry and the country of an 18-year statute of repose:

1 - We have committed at Cessna to restart piston aircraft production as quickly as possible after the enactment of a statute

of repose. As a result, literally hundreds of suppliers such as engine, avionics, propeller and instrumentation manufacturers, would increase their employment;

2 - Within five years, more than 25,000 jobs would be created at no cost to the government. These would be well-paying jobs in every sector of the industry and all areas of the country, and would include not only all phases of production, but also engineering, marketing and customer support;

3 - We would create a whole range of vocational opportunities for young people interested in a career in aviation;

4 - Manufacturers in this country would regain their worldwide leadership in this important industry, and new aircraft sales would contribute positively to our balance of trade;

5 - Student pilot starts would increase significantly, providing a necessary pool of pilots for the airlines and other commercial operations.

Further evidence of the merit of this legislation is the fact that a statute of repose is fully supported by literally every aviation consumer organization, some of whom you will hear from today. The bill is also strongly supported by the International Association of Machinists (IAM), Airline Pilots Association and other local labor organizations.

I had the privilege of serving as a member of the Airline Commission in 1993 and was pleased that one of its major recommendations was the enactment of a 15-year statute of repose.

This legislation is a win-win-win situation. It will bring an important industry back to life. It will create thousands of jobs. It will provide a whole range of excellent career opportunities. And it will have an immediately positive impact on the economic health of our great country.

I have devoted most of my working career to aviation. I have watched with sadness and frustration the destruction of an industry because of a product liability environment that defies reasonability. Claims just go on and on despite the fact that the operational safety record of general aviation aircraft has achieved new records almost every year for the past 25 years.

This is a simple piece of legislation which eliminates financial exposure only after the product has proven its integrity. But while it is a simple, straightforward bill, the positive results will be immediate and will increase over time.

I appreciate this opportunity to speak in support of The General Aviation Revitalization Act -- truly a meaningful and critical piece of legislation which will have enormous long-term benefits.

Mr. BROOKS. Thank you very much.

Mr. Boyer. The gentleman is recognized.

STATEMENT OF PHIL BOYER, PRESIDENT, AIRCRAFT OWNERS AND PILOTS ASSOCIATION

Mr. BOYER. Thank you, Mr. Chairman, and members of the committee. I will summarize my statement.

Mr. BROOKS. We are delighted to have you.

Mr. BOYER. Does the clock start ticking now? This has been a long-awaited opportunity for us. I appreciate the opportunity to represent pilots.

I am the President of the Aircraft Owners and Pilots Association. That is 326,274 pilots as of the end of last month who primarily fly—and I would like to make this important distinction—piston-powered airplanes, not turbo jets or jets or turbo props.

This is——

Mr. GLICKMAN [presiding]. I ask unanimous consent to pass the bill. [Laughter.]

Go ahead.

Mr. BOYER. Mr. Glickman, may I have more than 5 minutes?

The important thing is a consumer organization which represents the victims of accidents in general aviation aircraft. Thus, we have a clear interest in maintaining an adequate and equitable compensation system.

Nevertheless, in survey after survey of these very individuals who are consumers, product liability is their primary concern.

As you can see from the chart on the left, when we asked whether pilots are optimistic or pessimistic about general aviation, they tell us the alarming number are pessimistic. And these are the heavy users.

Let's take a snapshot not at those jobs lost but of those pilots who have left the system. Right now, new statistics, 4 weeks old, in this country there are now 665,000 licensed pilots, airline pilots, general aviation pilots, corporate pilots. The high point of this number was 825,000. We are losing now on average 18,000 pilots a year.

And what about future growth? Where are the new pilots coming from, the student pilots? Last year's number represented the lowest number of student pilot starts since the FAA started keeping track of these numbers in 1970.

And what is important about this is in the future, a blue ribbon panel led by Senator McCain indicated we would be suffering the need for airline and commuter pilots some 5 to 10 years out. And this is where they start.

And on the other hand, let me take just a moment to show you two indications that there is some good news, and that is the safety record of general aviation. Whether you look at total accidents or fatal accidents, GA pilots today are safer, better trained, not because of product liability laws on the books today, but because more have gone out and gotten the instrument rating that was referred to earlier. More are able to fly in the mountains, in snow showers and in the clouds.

We asked AOPA members, your voters, what they felt was the most important issue facing general aviation today. And one-half, one-half of the consumers cited product liability as the key issue.

It was followed by the high cost of flying, which I will mention in just a second.

Other AOPA policy and issue surveys reveal that 97 percent of our members believe that product liability is a major concern for the industry. Half are convinced that low product numbers of new aircraft are due in part to product liability problems, and it is the most important issue facing general aviation today.

Ninety-three percent of AOPA members are willing to give up their right to sue an aircraft manufacturer for production or design defects in older aircraft to help reduce the industry's product liability burden.

This is the balance that our members are trying to strike. We don't have the economic corporate incentives that Russ Meyer talked about. We just want to see the industry revitalized. We want to see an ability to continue to buy new, affordable airplanes and to have a continuing parts supply.

To make sure we were on the right track, we asked pilots and owners about specific proposed legislation. Ninety-two percent indicated you and your fellow Members of Congress should pass this bill. Never have we in the 55-year history of our association surveyed an issue and gotten this kind of overwhelming consensus.

And more important, there is an expectation that this will bring relief to aircraft pricing, which is addressing the cost issue, the number-two concern of our members. Whether it is the 15-year time frame in your and Congressman Hansen's bill or the 18-year compromise that was voted on in the Senate, our members feel that this would eliminate the nuisance lawsuits put against the major airframe manufacturers. Yet, the bill does preserve the balanced approach that I discussed.

The average age of the aviation fleet, as you have heard, is 27, 28 years old. There is no such thing, gentlemen, as an old airplane. There are old airframes manufactured by Cessna and others, but basically a collection of new parts. And so this fleet of 28-year-old airframes has a collection of many, many new parts. And we feel as consumers we will be protected, because the clock starts ticking under this bill each time we install a new component, as indicated, an altimeter, or a safety-related item like a vacuum pump or alternator or something like that.

Automobiles, as you know, wear out in 5 or 10 years. You wouldn't think of driving a 28-year-old automobile. Yet, airplanes have an almost indefinite useful life.

Obviously, very few aircraft are being produced new. And we certainly hope this bill will stimulate the production of new airplanes.

Product liability is an important issue for those who own those 28-year-old airplanes. That is for one reason: a lack of parts. When there are no production lines at Cessna, there are no production lines on a periodic basis for parts. Therefore, if the stock of a particular item is out because it isn't feeding a production line, we must wait.

I have an example of a Piper Saratoga, 6–C airplane, grounded, sitting on the ramp idle for 9 months until they waited for Piper to come up and produce a small, simple landing gear actuator switch. Product liability concerns, as you heard Mr. Meyer talk about, have stymied research and development.

We are flying airplanes today that are not taking advantage of any of the electronic advancements that are in automobiles. Magnetos, for instance, have not been used in automobiles since 1915, and yet they are still used in today's aircraft.

Never before in history has a consumer group been so willing to help an industry balance their right to sue a manufacturer with relief for the industry to help produce new products. We are pursuing this opportunity with the full resources of our organization, not just pilots but 326,000 voters, and we have seen and hopefully you have seen in your mail the outcry from these people.

The downward spiral of our industry continues, and we must develop creative approaches to this trend. We believe this bill or the Senate bill with its 18-year language and its amendments should be sent to the full House for passage.

Thank you.

[The prepared statement of Mr. Boyer follows:]

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Statement of Phil Boyer

President

Aircraft Owners and Pilots Association

Before the

House Committee on the Judiciary

Subcommittee on Economic and Commercial Law

The Honorable Jack Brooks, Chairman

Concerning the
General Aviation Revitalization Act

May 12, 1994

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Mr. Chairman, my name is Phil Boyer, and I am President of the Aircraft Owners and Pilots Association. We are pleased to offer our strong support for the General Aviation Revitalization Act. House Resolution 3087 is sponsored by Congressman Dan Glickman and Congressman James Hansen, and it is co-sponsored by more than 290 Members of the House of Representatives. The Senate companion bill, S.1458, which is sponsored by Senator Nancy Kassebaum, passed the Senate on March 16 by a vote of 91 to 8.

AOPA represents the interests of 325,000 individual members who own and fly general aviation aircraft to fulfill their personal and business transportation needs. That is 60% of the active pilots in the United States. AOPA members own or lease 62% of the aircraft in the general aviation fleet.

AOPA is a consumer organization which represents the interests of the likely victims of accidents involving general aviation aircraft. Thus, we have a clear interest in maintaining an adequate and equitable compensation system.

Nevertheless, in survey after survey, product liability reform is unquestionably the number one concern of our members. AOPA members overwhelmingly believe that unreasonable product liability exposure has diminished the availability of affordable general aviation aircraft and parts and has aided in the downfall of the U.S. general aviation manufacturing industry.

Mr. Chairman, we're not here today because we have an economic interest in product liability reform -- as the manufacturers clearly do. We're here because we truly believe product liability reform is in the best interests of AOPA members. They are the consumers who own and operate general aviation aircraft.

The manufacturers will cite the statistics that clearly indicate general aviation as an ailing industry. Equally important, however, is the concern shared by our members, the owners and pilots who operate the nation's fleet of general aviation aircraft. (GRAPH 1) When asked about the future of general aviation, a majority of the AOPA membership are pessimistic. This is an alarming statistic considering that these are the heavy users of the system.

They see the same facts and figures about general aviation that drive them to this pessimism:

> (GRAPH 2) Active pilots were well over 825,000, and at the close of 1992, the total pilot population reached the lowest count of the last 25 years: 682,000 certificate holders! The situation continued to worsen in 1993, when the pilot population declined by another 17,000 certificate holders to 665,000.
>
> (GRAPH 3) Future growth of the pilot population can be predicted by looking at the student pilot certificates issued. At the end of 1992 this figure closed at a 22 year low: 78,000 new student pilots entering the system. And 1993 was even worse yet, with only 66,500 student pilot certificates issued. Remember, from this group comes our air carrier and military pilots, which a recent "Blue Ribbon Panel" led by Senator McCain indicates will suffer in numbers of trained replacement pilots some five to ten years out.
>
> (GRAPH 4) Just as alarming are the statistics showing a substantial decline in the number of private pilot certificates held. This is a direct reflection on the student numbers dropping, hence fewer numbers achieve their private license.
>
> (GRAPHS 5 & 6) Let me take just a moment as I cover this "snapshot" of the general aviation industry to show two other graphs with downward trends, but that represent "good news". Adjusted for hours flown, the general aviation safety record is improving each and every year. Whether it be total accidents or fatal accidents, the G.A. pilots of today are safer, better trained and continue to improve on what is now a quite impressive safety record.

Why is all the "bad news" depicted on the preceding charts? We asked AOPA members, your voters, to tell us what they felt were the most important issues facing general aviation today? (GRAPH 7) One half cited Product Liability as the key issue.

It was followed by the high cost of flying, in many cases as I will point out later, related to our present liability laws. Other AOPA policy and issue surveys reveal that 97% of our members believe that product liability is a major concern for the industry. Half are convinced that low production of new aircraft due in part to product liability problems is the most important issue facing general aviation today.

Ninety-three percent of AOPA members are willing to give up their theoretical right to sue an aircraft manufacturer for production or design defects in older aircraft to help reduce the industry's product liability burden. This staggering majority of our members also believe that Congress should pass a reasonable statute of repose for general aviation aircraft.

We listen to our members and we have heard their nearly unanimous call for action on product liability reform. But because of the longstanding obstacles to product liability reform, we at AOPA began to rethink this problem approximately three years ago. We came to the conclusion that there might be key components of previous product liability bills which, if proposed separately, would stand a better chance of passing than the more comprehensive reform legislation.

Our focus turned specifically to the statute of repose, and we stepped forward in 1992 with our own concept of a General Aviation Revitalization Plan -- advocating separate statute of repose legislation as the key component. As part of this early effort, we flew to Wichita to meet with the manufacturers and tour their facilities. We visited with Congressman Glickman and other long time proponents of product liability reform. Our new thinking on the issue convinced us that a statute of repose is the single most important step which could be taken to provide relief for aircraft manufacturers.

For this reason, we are extremely pleased by the strong support the Glickman/Hansen bill has received so far from Members of Congress. We see this as our best opportunity yet to achieve meaningful progress on this longstanding issue, and we are applying the full resources of our Association to the task.

This legislation represents a new approach to the product liability problem, and it is a much more limited proposal than the bills from previous years. AOPA agrees wholeheartedly with the new approach.

(GRAPH 8) To make sure we were on the right track, we asked pilots and owners about the specific Statute of Repose legislation, and 92% indicated you and your fellow members of Congress should pass such a bill. Never before has AOPA surveyed an issue, and gotten this sort of overwhelming consensus. (GRAPH 9) More important, there is an expectation that this would bring modest price relief to aircraft pricing, which addresses the cost issue which I cited earlier as the number two concern.

Whether it's the 15 year timeframe proposed by Congressmen Glickman and Hansen in their original bill, or the 18 year compromise contained in the Senate passed bill, a reasonable statute of repose will aid the manufacturing industry by substantially increasing the difficulty of filing nuisance lawsuits against the major airframe manufacturers. They are the obvious "deep pockets" in most cases. Yet the bill also preserves the balanced approach we as consumers must insist upon to ensure a remedy in cases where a defective part or component is actually to blame for an accident. Here's how.

First of all, we've all begun to think of 18 years as the relevant period of time under the statute of repose, since that was the compromise reached in the Senate. As you may know, the average age of the general aviation fleet is around 28 years old. But there really is no such thing as an 18 year old aircraft, nor a 28 year old aircraft. The airframe might be that old, or even older. But the aircraft as a whole is actually a collection of newer parts regularly replaced throughout the useful life of the airframe. Unlike an automobile which tends to wear out entirely after five or ten years, older aircraft are really an "old" collection of "new" components attached to an original airframe with an indefinite useful life.

The Glickman/Hansen bill ensures that consumers will have a redress for defective components by providing that the statute of repose clock begins to run anew on each individual part whenever it is replaced or installed. So the airframe manufacturer of an older aircraft would be protected by the statute of repose, and so would the manufacturer of those very few parts or components which happen to last 18 years or longer. But our members will continue to have a remedy in cases where a more recently installed part proves defective.

Obviously, very few new aircraft are being produced, and we certainly hope the Glickman/Hansen bill will help stimulate the production of new aircraft. But the product liability problem often impacts our members in even more direct fashion.

For example, we are alarmed by the growing shortage of new replacement parts for existing aircraft. Product liability is a major reason for the lack of parts for the aging general aviation fleet. I'm aware of one case, for example, where a Piper Saratoga -- a typical six seat aircraft -- sat idle on the ramp for nine months because it was not possible to secure a simple replacement actuator for the landing gear.

Furthermore, product liability concerns have stymied research and development. We're relying on ancient technology. Did you know we're still using magnetos in aircraft engines, even though they haven't been used in automobiles since 1915? You won't find an electronic ignition system in an aircraft. But they've been in automobiles for twenty-five years.

(GRAPH 10) Never before in history has a consumer group been so willing to help an industry by delicately balancing their right to sue a manufacturer with relief for the industry to produce new products and support present products. A full 93% of the AOPA members indicate support for a Statute of Repose.

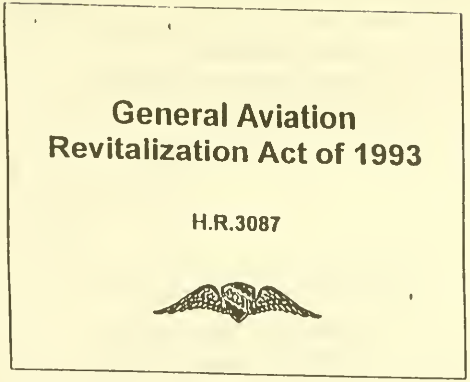
(GRAPH 11) Again, the Glickman/Hansen General Aviation

Revitalization Act has presented us with an outstanding opportunity to address the product liability problem. We are pursuing this opportunity with the full resources of our organization. We have asked our members for their active support in this effort, and we have seen an overwhelming response from them.

The downward spiral of our industry continues, and we must develop creative approaches to reverse the trend. We look forward to working with the Committee as we continue our efforts to achieve reasonable product liability reform. Our future depends on it.

My thanks again for the opportunity to share our thoughts, Mr. Chairman. I will be happy to answer any questions.

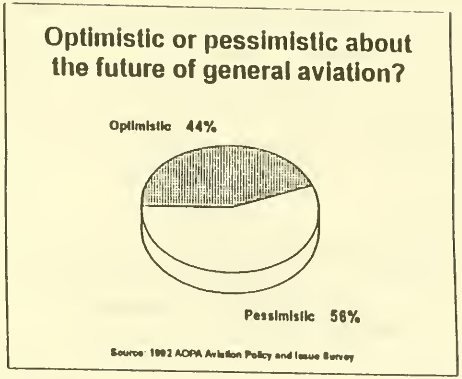
GRAPH 11



General Aviation Revitalization Act of 1993

H.R.3087

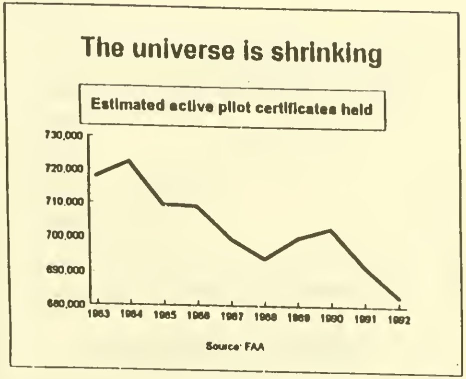
GRAPH 1



Optimistic or pessimistic about the future of general aviation?

Source: 1992 AOPA Aviation Policy and Issue Survey

GRAPH 2

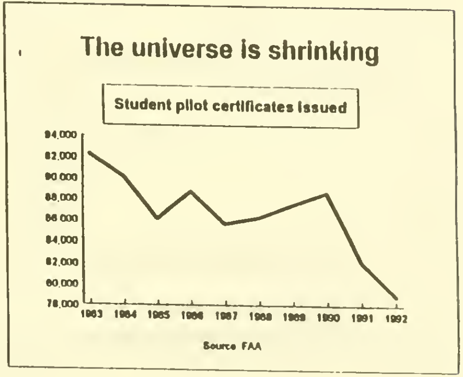


The universe is shrinking

Estimated active pilot certificates held

Source: FAA

GRAPH 3

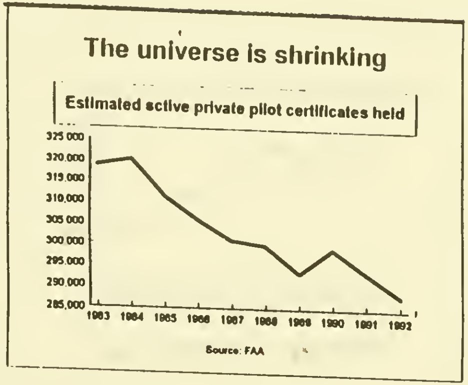


The universe is shrinking

Student pilot certificates issued

Source FAA

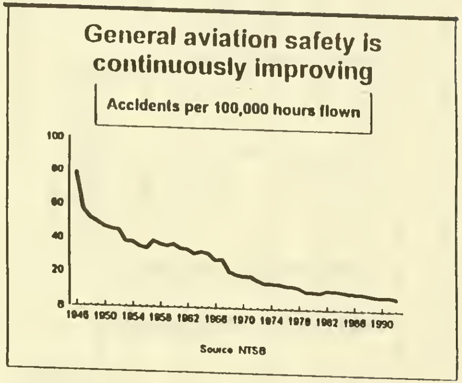
GRAPH 4


The universe is shrinking

Estimated active private pilot certificates held

Source: FAA

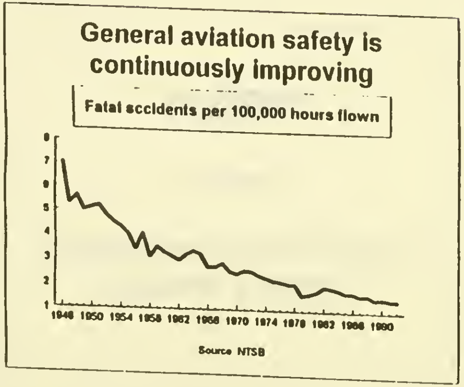
GRAPH 5


General aviation safety is continuously improving

Accidents per 100,000 hours flown

Source NTSB

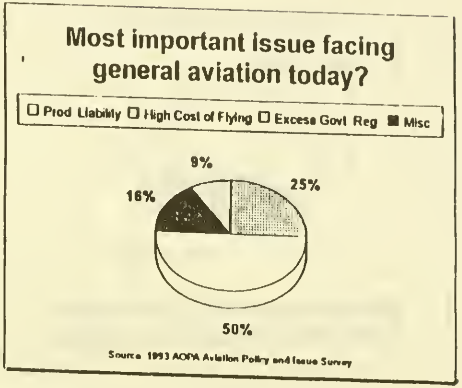
GRAPH 6


General aviation safety is continuously improving

Fatal accidents per 100,000 hours flown

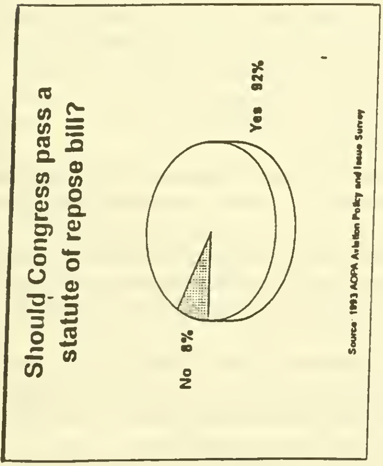
Source NTSB

GRAPH 7

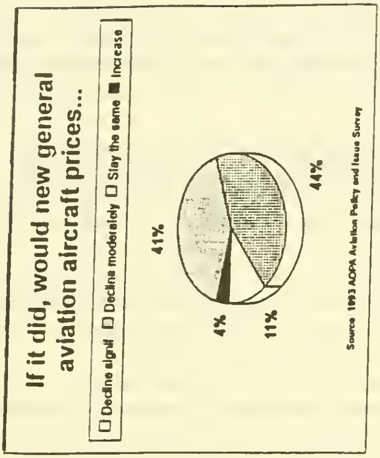

Most important issue facing general aviation today?

Source 1993 AOPA Aviation Policy and Issue Survey

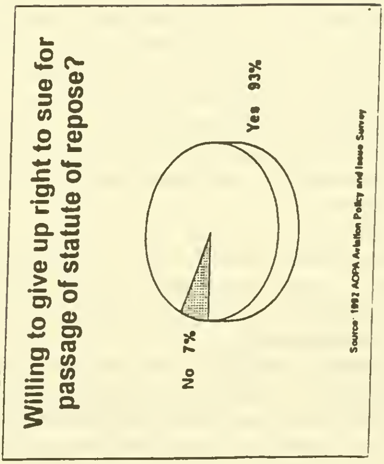
GRAPH 8



GRAPH 9



GRAPH 10



Mr. GLICKMAN. Thank you, Mr. Boyer.

It is a pleasure to have Mr. Goglia here, representing the IAM, which happens to be the largest union in my State, one that is extremely interested in the problems of aviation, as it represents the bulk of aviation workers in this country. It is a pleasure to have you here.

STATEMENT OF JOHN GOGLIA, MEMBER, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS

Mr. GOGLIA. Thank you, Mr. Chairman. This is a tough act to follow.

Mr. Chairman, my name is John Goglia. Unfortunately, John Peterpaul, general vice president for the International Association of Machinists and Aerospace Workers, could not be here today. And he has asked me to present this testimony on his behalf.

The IAM represents more than one-half million workers in a variety of industries, including the general aviation, aerospace, transportation, manufacturing, defense, electronics, and shipbuilding industries. We are honored to have the opportunity to appear today before you, and express our support for the General Aviation Revitalization Act, in particular the Senate version, S. 1458, which has passed the Senate overwhelmingly.

At the outset, let me dispel any misunderstanding regarding our support of the bill. We support the General Aviation Revitalization Act because it will result in the creation of high-skilled, good-paying jobs in an industry that has been virtually decimated. We also support the bill because it is very narrowly drafted for the unique nature of the general aviation industry.

Although we support the bill, let there be no mistake: We remain steadfast in our firm opposition to general tort and product liability reform.

As I have stated, for us, the General Aviation Revitalization Act means jobs—good-paying jobs. If enacted, it would lead to the revitalization of an industry that once led the world in aviation manufacturing.

Unquestionably, this industry has been in steep decline. As the industry has declined, good-paying jobs have vanished. Thousands of IAM-represented workers have lost their jobs and can no longer earn a living by manufacturing piston-engine airplanes.

According to statistics provided by the General Aviation Manufacturers Association, more than 100,000 jobs have been lost in manufacturing, sales, service and related industries. Cessna, which once produced 9,000 aircraft per year, has not built a piston aircraft since 1986. Piper is struggling to emerge from chapter 11 bankruptcy and is producing well below historic levels.

As the largest union in the general aviation manufacturing industry, we know how devastating it has been to lose our most vital industries and jobs created by those industries to foreign manufacturers in other countries.

The number of foreign manufacturers in the general aviation industry now dwarfs that of the U.S. manufacturers, a complete reversal of just a few years ago. Indeed, the General Aviation Manufacturers Association reports, "In 1980, there were 29 U.S. manufacturers of piston-engine aircraft and 15 foreign manufacturers. In

1992, there were nine U.S. manufacturers and 29 foreign manufacturers of piston-engine aircraft."

The situation is so bleak and the industry has been so decimated that even the U.S. military has been forced to go overseas for a significant portion of its trainer aircraft requirements.

Enactment of the General Aviation Revitalization Act will dramatically reverse this devastating trend. At least one aircraft manufacturer representative has publicly stated that it will reopen its production lines immediately after the bill is enacted.

These new jobs will provide long-overdue employment opportunities to highly skilled workers whose lives have been disrupted by the decline of the general aviation manufacturing industry. These new jobs will also provide other workers, like those in the defense industry who have been laid off in the wake of new national budgetary priorities, with desperately needed job opportunities.

While some people have expressed concern that enactment of the bill could jeopardize public safety, their fears are unwarranted. Unlike other industries, the aviation industry is among the most heavily scrutinized industries in the country.

For example, the Federal Aviation Administration must approve aircraft design, manufacturing, and repair methods. The FAA also regulates repair facilities and mechanics and pilots who maintain and fly airplanes. In addition, the FAA, along with the National Transportation Safety Board, reviews and investigates every airplane incident to determine, among other things, its cause.

In view of the specific nature of this narrowly drafted bill and the fact that it pertains to the highly regulated aviation industry, we believe that the General Aviation and Revitalization Act is a fair way to assist a devastated industry create jobs without jeopardizing public safety.

On behalf of our organization and General Vice President John Peterpaul, I once again wish to express our appreciation for the opportunity to appear before you today.

I personally implore the members of this panel to do something to revitalize this industry. If you deem this bill inappropriate, do something that is appropriate. There are 100,000 jobs at stake. Maybe 5 percent of those jobs belong to organized labor. The rest belong to other Americans. Give us the opportunity to go to work. We want those jobs.

[The prepared statement of Mr. Goglia follows:]

U.S. House of Representatives
Committee on the Judiciary
Economic and Commercial Law Subcommittee

General Aviation Revitalization Act of 1993

Mr. Chairman, unfortunately, John Peterpaul, General Vice-President for the International Association of Machinists and Aerospace Workers (IAM) could not be here today. My name is John Goglia and he has asked me to testify on his behalf.

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In view of the specific nature of this narrowly drafted bill and the fact that it pertains to the highly regulated aviation industry, we believe that the General Aviation and Revitalization Act is a fair way to assist a devastated industry create jobs without jeopardizing public safety.

On behalf of our our Organization and General Vice President John Peterpaul, I once again wish to express our appreciation for the opportunity to appear before you today.

Thank you.

Mr. GLICKMAN. It is hard to follow that.

Mr. Hvass, it is a pleasure to have you here.

STATEMENT OF CHARLES T. HVASS, JR., HVASS, WEISMAN & KING, MINNEAPOLIS, MN

Mr. HVASS. Thank you, Mr. Chairman and members of the committee.

If I could have my charts put up also. I am a kid who at the age of 15 took out of a magazine the $5 coupon to go out to the airport and learn how to fly an airplane. Today you won't find those coupons. The only group promoting aviation is the Experimental Aircraft Association with their Young Eagles Association. Is it any wonder that the kid airplane manufacturers are the ones leading in the gathering of new student pilots.

I am a private pilot, instrument, multi-engine and seaplane-rated. I have flown many of the aircraft made by the manufacturers you have heard from this morning.

I am also married to a woman who spent 6 weeks in a burn unit because the general aviation aircraft she was in when she was sent up as a student pilot didn't have enough fuel and had to make an emergency landing, burst into flames.

So I come here as someone who has had personal knowledge, not only through my clients but also through my spouse, having been through a general aviation aircraft. I know what happens when one of these airplanes crashes and the subsequent injuries result.

There are two points I want to make in my initial testimony this morning. The first has to do with the representations we have heard about the health of this industry. I kind of wonder why this is not a bill limited solely to single-engine piston aircraft. As I have heard the testimony, that seems to be all that people are talking about. There aren't any made in Brazil that are being sold in this country. There are three models coming from France. I don't know of any currently listed, at least in the current directory, Business and Commercial Aviation, coming in from England or Canada or the Far East. There are piston and turbine equipment, jet equipment, but not piston equipment coming from everywhere except France.

If we look at this industry, we see throughout the decade of the 1980's into the 1990's this has been a very healthy industry as it has shifted its production to turbine and jet equipment. You can see their profit levels have been substantial. We look at the total sale of new and used aircraft. Keep in mind in 1978, 1979, 1980, this industry had its largest production of aircraft from the early 1970's to the early 1980's, the ratio of pilots to airplanes went to 3½ to 1.

A lot of pilots rent. We don't all own. As a result of that, as you get more and more aircraft with the same performance as the one that was sold 10 years ago and there are used aircraft on the market, you can see in the bottom chart there how the used market has held substantially. That is the production of airplanes that they put in the 1970's.

If I could have the next chart, please. What we see is what has happened to the aircraft market. The demand has shifted. What you have is the used aircraft market on the top in the lighter gray.

You have got the new aircraft market in the dark. That is piston and jet aircraft primarily they are selling.

There are 13 models of single-engine piston aircraft listed for sale in Business and Commercial Aviation, in the brand new 1994 edition I got a week ago. These aircraft are out there and available for people that want to buy them. Because of the huge number of aircraft, they are not buying them because they can buy the used aircraft.

The other thing that happens, if you want higher technology, the kit plane makers, I hear about jobs being lost. The kit plane people are not GAMA jobs. You are not hearing about those jobs. That is competition for the people that are sitting at this table. They are making these airplanes. They are building these airplanes. They are providing the kits. So there are jobs out there, manufacturing single-engine kits for people to sell.[1]

If I could have the last chart, what we see, and I am just going to concentrate on the top two charts, on the left you have sales from Beechcraft. Beechcraft is a very healthy company. Beechcraft is making primarily turbine aircraft. They just bought one of the British competitors. They are continuing to manufacture a jet that they bought from Mitsubishi. There are no Japanese aircraft in the general aviation market today.

If you look on the right, you will see the profits for Cessna. Mr. Meyer talked about his decision to shut down the production line in 1986. He did. And when those jobs were eliminated, Cessna's profitability—they still had the airplanes out there. The tail was still there for liability. But the profitability of Cessna went up in spite of the fact that for later years they had huge sums of money for development of the Citation aircraft.

The real inherent problem with the bill that you have before you is safety. Mr. Meyer said that Cessna has been very big on safety. I went back to a 1980 Aviation Consumer magazine. The issue in the aircraft industry on crashworthiness, the car you have been driving since the late 1960's has had shoulder harnesses. Now you have air bags, you have a dash that will keep you from being hurt.

As reported in 1980 by the Aviation Consumer magazine in response to the same proposed rule, that is, that there be shoulder harnesses in aircraft, not just seat belts, Cessna said this: "We agree with the concept of shoulder harnesses. However, we have noted a large proportion of operators refuse to use the harness installations already provided in aircraft. Therefore, we recommended the manufacturer only be required to have such installations be available at the purchaser's request and not as standard equipment."

It goes on, "Unfortunately, for many years the supposedly optional Cessna harnesses were not even listed on the company's price sheets. People that wanted a simple shoulder harness in an airplane couldn't get it."

I want to show you finally a tape. Aircraft from 1975 flying over Minnesota. Twin-engine aircraft called a Cessna 411. Lost the left engine on takeoff. The aircraft was supposed to be able, according to the representations, to be able to get back to the airport. The plaintiff tested it. It took 270 pounds of pressure on one rudder pedal to keep the airplane flying straight. The seat frame flexed. Cessna said, that is not right, we are going to test the airplane. And what they did was they hired Al White, an X–15 test pilot, to do exactly what happened to the plaintiff in Richfield.

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[1] Copies of the charts presented by Mr. Hvass are attached to his prepared statement.

And what I want you to picture in your minds as you see the end of this tape is what would happen if instead of desert for the Cessna test pilot, you had houses in Richfield, MN, when the aircraft was flying.

The aircraft is taking off. Cessna's pilot is flying. As he leaves, you are going to see a sudden shift in the airplane when he pulls power to one of the engines. Then watch what happens.

[Videotape shown.]

Mr. HVASS. If there had been houses instead of desert, you would have had the same accident we had. The Aviation Consumer magazine called upon Cessna to buy up the other aircraft then outstanding at a cost of $4 million and destroy them all. Cessna did not do that. Those airplanes are still out there. And under this statute of repose, an aircraft that a jury found defective, an aircraft that Cessna's pilot couldn't successfully fly back is still out there and they would have no liability for it in spite of their own testimony.

Thank you.

[The prepared statement of Mr. Hvass follows:]

STATEMENT OF

CHARLES THOMAS HVASS, JR.

SUMMARY

A general aviation statute of repose should be opposed because (1) neither the FAA nor the manufacturers of general aviation aircraft have adequately focused on the safety and crashworthiness of the general aviation fleet, so to grant manufacturers immunity from suit would exacerbate matters and lead to more fatalities; (2) the domestic general aviation industry is not on the verge of "collapse" and any decrease in new aircraft sales since the 1970's is due to a whole host of factors unrelated to product liability costs; and (3) a statute of repose would only serve to shift the burden of defectively designed aircraft away from the manufacturer of the aircraft and onto the shoulders of those who can least afford to bear it - the innocent victims.

I. Safety and Crashworthiness Have Not Been a Priority of the General Aviation Industry.

Aircraft are certified to old Civil Aeronautics Board standards, which do not require that airplanes be built using modern technology. The car you came to work in today has a safer seat, shoulder belt and harness, safer fuel system, and safer impact resistance than single engine piston aircraft at any nearby airport. As Cessna's own Rule Meyer put it, the "ultimate answer" to reducing product liability costs is "to eliminate aircraft accidents." (Flying 5/88).

II. Any Reduction in General Aviation Aircraft Sales is Unrelated to Product Liability.

Any problems now facing the industry are the result of a whole host of reasons unrelated to product liability costs. Even general aviation manufacturers have admitted that product liability reform is not the answer for the industry's problems. As William Monroe, President of Aerospatiale's operation the U.S., put it, liability problems are a "scapegoat" for the industry's "self-inflicted problems." General Aviation News & Flyer, 11/93. Similarly, Cessna's Russ Meyer stated back in 1988 that the industry "will achieve nothing by pointing fingers" at "plaintiffs, lawyers, insurance companies, manufacturers, or anyone else in the product liability equation", but rather, the "answer" to the industry's so-called product liability problems "lies in a substantially improved safety record." Flying, 5/88.

Factors Leading to Reduced New Aircraft Sales

a. The Economy

b. Fundamental Changes in Market Demand

Consumers are unwilling to pay new aircraft prices for the same old basic aircraft designs and technology that has remained unchanged since the 1940' and 1950's. As a result, consumers are turning to used aircraft that offer the same technology and performance at a much lower price and to innovative kit-built aircraft. As evidence of the strength of the used aircraft market, GAMA statistics reveal that between 1987 and 1992, there was an average of about 38,600 used aircraft sold per year compared to only 1,138 GAMA new aircraft sold per year. Sales of the exciting kit-built aircraft are booming as well, totaling 3,318 in 1992, about three and one-half times the number of sales reported by GAMA in 1992.

Demand has also shifted to the production of high technology and high value business jets and turboprops that have a higher per unit yield for manufacturers. Companies such as Cessna and Beech that have recognized this demand and made calculated business decisions to focus production on these aircraft have continued to be tremendously profitable.

c. There are too Many Aircraft and Too Few Pilots

As the staggering used aircraft sales indicate, there is a glut of aircraft on the market and just not enough active pilots to meet the surplus. Due to reasons unrelated to product liability, the pilot to aircraft ratio has gone from 7 pilots per aircraft to approximately 3 1/2 pilots per aircraft. The declining pilot population, combined with overproduction in the late 70's results in lower demand for aircraft. Also, student starts have dropped from 200,000 per year to a low approaching 125,000.

d. Bad Business Decisions

John Baker, former president of Aircraft Owners & Pilots Association wrote in 9/29/88 letter that "the cause of the problem [low aircraft sales] was clearly some unbelievably bad business decisions by the manufacturers' fifteen to twenty years ago which is compounded by some lousy products."

e. Federal Tax Policy

The old luxury tax and the lack of an investment tax credit have hurt new aircraft sales.

f. Failure to Reserve Toward Future Insurance Needs

The industry, rather than saving profit to pay for future reserves for products liability insurance when it was selling the aircraft, returned that money to the shareholders as profit and found itself, when sales declined, facing a shortage.

III. The Aircraft Industry is not as Dead as it Portrays Itself.

How can the domestic general aviation industry be on the verge of "collapse" when (1) its two largest manufacturers, Beech and Cessna, are experiencing record profits of over $100 million each; (2) used and kit-built sales are booming; (3) GAMA sales measured in total billings have risen steadily over the last decade; and (4) domestic manufacturers are exporting in record numbers.

IV. The So-Called Foreign Invasion

A recent CRS report dated 10/7/93 concluded that there has been no foreign invasion and that U.S. manufacturers continue to dominate the international marketplace with no significant threat from foreign competitors. In addition, the foreign invasion argument does not hold water because (1) foreign manufacturers must comply with the exact same product liability laws as U.S. manufacturers; (2) the "tail of liability" problem is a self-correcting one as the years pass and Aerospatiale has been selling aircraft in the U.S. since 1979; (3) U.S. and foreign aircraft are being sold at the same prices; and (4) virtually all of the foreign aircraft sold in the U.S. today are also manufactured in the U.S., so the jobs that produce those aircraft are nearly all American jobs.

V. Frivolous Suits Against Manufacturers Are a Rarity.

Despite the limited anecdotal claims of manufacturers to the contrary, manufacturers are usually not sued after an accident and are only named as defendants when the evidence warrants.

VI. A Statute of Repose Will Only Reduce Safety and Unfairly Burden Victims.

Enactment of a statute of repose will not increase aircraft sales or production, create jobs, or otherwise improve the general aviation industry. The only effect will be to reduce aircraft safety and unfairly shift the burden of defectively designed aircraft away from manufacturers who profited from their sale and onto the shoulders of those who can least afford to bear it - the innocent victims of general aviation aircraft accidents and their families.

Members of the Subcommittee, my name is Charles T. Hvass and I am here today to testify in opposition to H.R. 3087 and S. 1458, the general aviation statute of repose bills currently pending before this Congress. My perspective on this legislation is different from most who will appear before you in that I approach this subject from a number of viewpoints. I oppose this legislation not only as an attorney who represents the victims of general aviation aircraft accidents and has witnessed the tremendous impact of aircraft accidents on these victims, but I also oppose this legislation as a pilot, a member of AOPA, a member of the Experimental Aircraft Association, and as a person who has had a member of my own family fall victim to a general aviation aircraft accident.

My opposition to a statute of repose stems from three basic principles: (1) neither the FAA nor the manufacturers of general aviation aircraft have adequately focused on the safety and crashworthiness of the general aviation fleet, so to grant manufacturers immunity from suit would exacerbate matters and lead to more fatalities; (2) the domestic general aviation industry is not on the verge of "collapse" and any decrease in new aircraft sales since the 1970's is due to a whole host of factors unrelated to product liability costs; and (3) a statute of repose would only serve to shift the burden of defectively designed aircraft away from the manufacturer of the aircraft and onto the shoulders of those who can least afford to bear it - the innocent victims.

I would like to take this opportunity to briefly expand upon these basic principles.

I. FAA and Manufacturer Safety Measures are Inadequate

Perhaps the best way to illustrate the inadequacies of the FAA safety regualtions and certification process is to compare them with those governing automobiles. When an automobile is manufactured today, it is required by law to satisfy up to 1990's design standards and employ state of the art safety technology, such as airbags. Due to the nature of general aviation aircraft, one would expect that such aircraft would have to meet similar, if not greater, design and safety standards than the automobile. Unfortunately this is not the case, as an overwhelming majority of the active general aviation fleet do not and could not satisfy existing, current FAA design standards. The safety and design standards which the general aviation aircraft must currently meet are, by their regulatory nature, minimum standards "grandfathered" in based on antiquated technology from the 1930's and 40's.

The process works as follows. In the 1950's, before the FAA was created, the old Civil Aeronautics Board developed design and safety standards for general aviation aircraft based on 1930's and 40's technology, known as "Part 3" regulations. When the FAA was created in the late 1960's, updated safety and design standards, known as "Part 23" regulations, were implemented and have been periodically updated ever since to incorporate new information. The problem is that general aviation aircraft manufacturers have for years have relied on "grandfather" clauses in the FAA regulations that allow "new" aircraft which were and are derivative designs of much older aircraft to satisfy only the outdated CAB "Part 3" standards rather than existing FAA "Part 23" standards. In fact, most of the aircraft produced in the 1970's and 1980's, and many of those being produced today, were certified based on 1930's and 40's technology and designs. There is no governmental initiative to surpass them. There are few marketplace forces to surpass them. The primary economic incentive to build safe airplanes, which meet today's technology, is coming from the liability system. Let me give you some examples.

Up until 1978, shoulder harnesses were not required for general aviation aircraft. They were optional, even though the safety aspect of shoulder harnesses were well known. I represented one individual who lost an eye in a crash of a Beech Queen Air 65. He would have been unharmed had the aircraft been equipped with shoulder harnesses. A passenger in that same crash suffered paraplegia when his back was broken through a combination of seat failure and lack of shoulder harness. The jury found Beechcraft liable, as it was demonstrated convincingly that the seat and belt arrangement, as built were far below the capabilities of the industry at the time the plane was built. Before you think that the crash was severe, I should tell you that the plane was repaired and went back to flying. Litigation has been the only incentive for the installation of proper seat and shoulder harnesses into aircraft, as both the F.A.A. and manufacturers have shown great reluctance to provide for better crashworthiness.

Another example is the Cessna 411, a twin engine airplane of which almost 50% have crashed over the years. The 411 was certified under CAB "Part 3" standards, which did not require that the aircraft be able to climb with only one engine. When a 411 crashed just after takeoff in Richfield, Minnesota, after a failure of one engine, Cessna, as part of the ensuing litigation, hired the premier test pilot in the U.S. to fly an identical aircraft to show that even with the failure of one engine, the airplane could be returned safely to the airport. This would prove then that the aircraft was properly certified by Cessna. When the Cessna pilot intentionally failed one engine, he lost control and crashed. He survived, many others who have crashed in 411's have not been as fortunate.

Testing done by Cessna and the plaintiff's expert indicated that 270 pounds of pressure was necessary on the rudder pedal to keep the airplane under control after loss of one engine. The regulations called for a force of just 150 pounds of pressure. For some reason in this certification process, the fact that the Cessna 411 did not meet the regulations "slipped by" permitting an aircraft to be built that did not meet the minimum regulation for single engine safety.

When the Aviation Consumer Magazine examined the safety record of the Cessna 411, they found it to be so bad that they called for the aircraft to be grounded. Under the bill now before you, Cessna would face no liability for these aircraft, even though they do not meet the regulations under which they were certified. Those 411's that have not yet crashed are still out there and are now more than eighteen years old, a complete defense under the statute of repose. To make matters worse, even after the above mentioned incident, all of the Cessna 400 series aircraft (the 401, 402, 414, 421) produced during the 1970's and 1980's continued to be designed and certified based on CAB "Part 3" standards, not FAA "Part 23" standards which require that an aircraft be able to operate with only one engine.

Another, and perhaps the worst example, of what would happen under a statute of repose bill is shown by the dismal record of the Beechcraft Bonanza. The V-tail design originated on the Bonanza in 1947. Yet, thousands were produced , and more than 200 have come apart in the air. (Compared to three with conventional tails.) The bills before you would exempt Beech from liability for all Bonanzas either 15 or 18 years old, and would give a defense that the aircraft met the regulations. Worse, the design defect aspects would be judged by a 1947 standard, even though the airplane was built into the 1980's. I believe that it was the pressure of potential liability that caused Beech to be the first general aviation manufacturer to pay for a fix for the defective part on an entire fleet of aircraft.

In short, under the bills that are before you, the incentive to update crashworthiness will be blunted. The manufacturers will face no responsibility for the thousands of aircraft that would be beyond the statute of repose. Kits for updated seat and shoulder belts, for seats, and other items that might improve crashworthiness would only serve to reopen the liability period. They will not be made available.

Let me also point out that, in addition to the antiquated design standards, the FAA certification process is fundamentally flawed in that it usually allows the manufacturer to certify its own aircraft as a "designated engineering representative" ("DER") of the FAA. No consumer, litigant, inspector, or other person is involved in the process. The F.A.A., understaffed as it is, cannot hope to conduct its own tests of new aircraft types. As a result, aircraft are certified when the results of tests performed by the manufacturer are submitted either directly to the F.A.A., or are approved through the work of a DER.

II. Reasons for Lack of Sales of New Aircraft

General aviation manufacturers claim that the domestic general aviation industry is on the verge of "collapse" due solely to product liability costs, but the truth of the matter is that product liability laws have virtually no impact on the overall health of the general aviation industry. Any problems now facing the industry are the result of a whole host of reasons unrelated to product liability costs. As William Monroe, President of Aerospatiale's operation the U.S., put it, liability problems are a "scapegoat" for the industry's "self-inflicted problems." General Aviation News & Flyer, 11/93. Similarly, Cessna's Russ Meyer stated back in 1988 that the industry "will achieve nothing by pointing fingers" at "plaintiffs, lawyers, insurance companies, manufacturers, or anyone else in the product liability equation", but rather, the "answer" to the industry's so-called product liability problems "lies in a substantially improved safety record." Flying, 5/88.

Let me briefly provide a list of the real factors behind any decrease in new aircraft sales.

a. The Kraus Report

In 1987, E.F. Kraus of Cessna Aircraft told the American Institute of Aeronautics and Astronautics that there were many factors contributing to the decline in General Aviation sales. Among them were low corporate profits, stiff airline competition, low air fares, competition from other upscale options (boats, cars), growing government regulations limiting access to major terminals, complex airspace environment, expensive training, and the popular image of general aviation aircraft as unsafe and frivolous. Product liability costs received but one sentence in his 11 page paper. Although the industry now derides Kraus' findings as being an "engineering analysis", Mr. Kraus, as a Senior Project Engineer for Cessna certainly understood the problems of the industry.

b. The State of the Economy

One of the main reasons the general aviation industry has experienced slow sales in recent years is the poor economy from which we are just now beginning to emerge. The general aviation industry is particularly susceptible when tough economic times arrive because both business and individual consumers tighten their budgets and have fewer dollars to spend on "luxury" items such as general aviation aircraft. GAMA President Ed Stimpson was correct when he recently stated that "as the U.S. economy recovers, general aviation manufacturers are well positioned for growth." GAMA 1993 Outlook & Agenda.

c. Demand in the General Aviation Aircraft Market

Another reason for slow sales of new aircraft is that most manufacturers continue to produce the same old basic aircraft with the same old technology that has been around since the 1940's and 50's and for which there is little demand. As industry analyst Edward Phillips put it, highlighted, "The industry's obsession with old technology (which) must be abandoned in favor of advanced designs, when manufacturers will risk seeing their obsolete products die a slow death at the hands of rising prices, decreased customer demand, and aggressive foreign competition. . . . The industry has done a little to advance the art of light aircraft design. As a result, products cost too much and deliver only marginal performance gains when compared with 40 year old versions. In short, U.S. builders are losing more sales each year." Aviation Week and Space Technology, 12/24/90. Furthermore, a recent Congressional Research Service report (9/10/93) on the general aviation industry concluded that "[q]uite simply, the traditional new aircraft manufacturers have been unable to convince the participants in this market sector that their products represent good value."

Because new aircraft being manufactured today are virtually identical to older aircraft that have been produced since the 1940's and 50's, consumers have no reason to buy a new aircraft when they can easily find a used aircraft that offers the same technology and performance, but at much lower price. For example, Aviation Week and Space Technology (10/88) compared the performance of a 1954 Beech Bonanza (used cost, $12, 500.00) to the performance of a new $156,000.00 Mooney-Porsche. The 1954 aircraft had a high useful load, better rate of climb, better cruise speed, and could handle higher "G" loads at maximum gross weight. As the author, John McClanahan wryly concluded, "I guess light plane technology has come a long way in 34 years."

Not surprisingly then, used aircraft sales have been booming as new aircraft sales have declined. According to GAMA's own statistics, between 1987 and 1992, there was an average of approximately 38,600 used aircraft sold per year compared to 1,138 GAMA new aircraft sold per year. Also booming are sales of kit-built aircraft. Consumers love these aircraft because they are innovative, high technology, and meet the demand of today's marketplace. According to the Sports Aircraft Manufacturing Association, approximately 3,318 kit-aircraft were sold in 1992, three and one-half times the number of new aircraft sales reported by GAMA in 1992.

These statistics on used and kit-built aircraft sales clearly illustrate that the general aviation industry in the U.S. is not "dead" or on the verge of collapse, but rather, a fundamental shift in demand has occurred towards used and kit-built aircraft. As the CRS report stated, "both of these sectors are thriving and have become the dominant players in the single-engine marketplace." (9/10/93).

Demand in the general aviation industry has also fundamentally shifted towards high technology and high value business jets and turboprops, and those manufacturers recognizing this shift in demand have been tremendously profitable. Let's use Cessna as an example. Back in 1986, Cessna made a calculated business decision to focus production on its CitationJet and Caravan Turboprop and to halt production of its smaller piston aircraft because Cessna realized it could make a lot more money producing a few high-priced jets than a high quantity of piston aircraft. In fact, in 1993 the average business jet pulled in about $7.4 million per unit sold while the average piston aircraft sold for about only $140,000.

The year after the decision to focus on business jets and turboprops was made in 1986, Cessna became profitable and has been highly profitable ever since, turning estimated pre-tax profits of $7.7 million in 1987, $25 million in 1988, $76 million in 1989, $106 million in 1990, and about $130 million in 1991. The CRS study (9/10/93) stated that "a number of industry observers. . .doubted Cessna has any real intention" of entering the single-engine piston market again because "it would be a bad business decision for Cessna to reenter this market, not because of the product liability issue, but because Cessna has done little by way of product development for this market."

Like Cessna, Beech Aircraft Co. has also been highly profitable focusing production on jets and turboprops, turning estimated pre-tax profits of $44 million in 1989, $80 million in 1990, $106 million in 1991, and about $120 million in 1992. In fact, Beech had record sales in 1992, the highest in its 60-year history. How can the domestic general aviation industry be on the verge of collapse when its two major manufacturers are experiencing record profits?

d. Too Many Aircraft and Too Few Pilots

As previously mentioned, there is a glut of used aircraft on the market today and the cold reality is that manufacturers are responsible for this oversupply. The director of communications at the General Aviation Manufacturers Association said in a letter to the editor of Industry Digest that "It is a rather common opinion that we probably built too many aircraft in the late '70's in response to consumer demand, fed by speculation on interest rates and rising prices."

The industry points to its large sales at the end of the 1970's as proof of what it would sell today should products liability reform be enacted, but a closer inspection of the facts reveals that the market could never support such sales today and could not support them then. In fact, in the late 1970's, the years cited by Russ Meyer and GAMA for aircraft sales over 17,000, Cessna completely flooded the market and pushed way too many aircraft on its dealers. Most of the aircraft were never sold to consumers, thereby causing many dealers to go broke and leading to an eventual class action lawsuit by the dealers against Cessna. The tremendous overproduction during this time frame substantially contributes to the glut of used aircraft on the market today.

Exacerbating matters is the fact that the number of active pilots is shrinking due to a number of factors unrelated to product liability. The vast number of pilots trained in World War II and in Korea, and trained through the Veteran's benefits programs of the 50's and 60's are retiring, or are reaching the age at which they no longer choose to fly general aviation aircraft. The resulting loss of pilots, compared to the glut of aircraft, combined with old technology and old safety, have resulted in a loss of sales.

For example, in 1974, a pilot population of 700,000 pilots was supported by a general aviation aircraft base of approximately 100,000 (7 to 1 ratio). The pilot population rose to 827,000 in 1979, with an aircraft base approaching 270,000. The result of the large production compared to the smaller increase in pilots, was a 3 to 1 ratio of pilots to aircraft. The pilot population continues to decline and has now slid to 693,000 (AOPA Pilot, May, 1994). The active aircraft fleet has declined, but the ratio is still 3.77 pilots per active airplane, far below the numbers that existed in the late 70's and early 80's.

There are also few new pilots earning their wings today. Over the past ten years, new students starts have dropped from 200,000 to a low approaching 125,000 student pilot certificates per year. As aviation expert Ed Phillips points out, "The industry has failed miserably in its attempts to make the public aware of, let alone appreciate, the tremendous contributions General Aviation aircraft make to the nation's air transportation system . . . . Unlike 40, or even 20, years ago, young people today rarely are seen climbing the airport fence for a closer look at aviation, and a kid who begs to wash aircraft in return for a flight is as extinct as a dinosaur."

Kraus was right -- old designs with marginal performance, and no new demand, combined with a glutted market, results in fewer sales.

e. Bad Business Decisions

John Baker, a former president of the Aircraft Owners and Pilots Association, has written, "I have very little sympathy for the straits the G.A. manufacturer finds himself in. Product liability judgments are not the cause of the new aircraft shortage we found ourselves. It is merely a symptom. The cause of the problem was clearly some unbelievably bad business decisions by the manufacturers 15 to 20 years ago which is compounded by some lousy products." (Emphasis added).

Further, Mr. Baker states, "If the industry was annually producing the twenty to twenty-five thousand quality products at an affordable price that the marketplace would absorb, then the per unit product liability insurance costs would not be significantly greater than they were in the mid-seventies."

f. Federal Tax Policy

Likewise, the federal tax policy has undermined General Aviation by increasing costs. Corporations now must pay a "hitchhiker" tax when non-business travelers ride on corporate flights that are less than 50% full.

The recently repealed luxury tax has also hurt new aircraft sales in the past. Beechcraft is blaming the luxury tax for the loss of more than 80 orders worth about $130 million. (Senate Rep. 103-102, 11/20/93). Cessna and others have not reported what they consider to be their losses due to the luxury tax.

According to LearJet President and CEO Brian Barents, the lack of an investment tax credit is also a "chief reason for slow sales". A former Cessna dealer has pointed out the aircraft were sold by touting the tax and depreciation advantages to high income individuals rather than on their technological merit or need. Although buyers seldom needed a new airplane, they bought them on the basis of investment tax credit and accelerated depreciation.

g. Failure to Reserve for Future Insurance Needs

The industry has, at various times, claimed that it cost $100,000 per aircraft for liability insurance. This figure was apparently arrived at by dividing the total premium paid by each company by the number of aircraft sold in that particular year. The misleading part of that statistic is that it fails to explain the industry's poor insurance practices leading up to the current "crisis."

When the industry sold over 18,000 aircraft in 1979, it would be expected that profits would be retained from the sale of each of those aircraft to pay for insurance premiums into the future. Apparently, in spite of the historical cycle of aircraft sales, the industry did not retain those profits -- it passed them on to their shareholders. Thus, the following year, the new aircraft sales had to pay the insurance bill, not only on the new aircraft, but also on each year's previous production. The result was that the insurance bill kept getting higher, because the industry was failing to reserve out of the sale cost of each aircraft. The poor business practice involved is evidence and may explain why the industry claimed "each aircraft" had an insurance bill of $100,000.00.

The only insight ever given into insurance costs indicated that the insurance price for production on a new aircraft is closer to $21,000.00 to cover product liability than to

$100,000.00 Interestingly enough, even that quote was provided at a time when Business Insurance, June 4, 1990, reported that "rates for aviation product manufacturers' liability insurance are down 20-30% this year (1990) compared with 50% last year." This means that the insurance rates fell by 60-70% from 1988 to 1990.

Moreover, Lloyd's of London reported that in 1987, its aviation insurance groups netted 61 million Pounds in profit "despite a spate of accident losses." (Aviation Insurance News, Sept. 8, 1988). Thus, at a time when the insurance industry was apparently triggering a products crisis, it was also triggering great profits for itself.

III. The So-Called Foreign "Invasion"

Another argument raised by General Aviation manufacturers is that if they are not given federal protection, the General Aviation industry will be taken over by foreign manufacturers who do not have the same "tail" of liability. They particular cite the French manufacturer Aerospatiale and their aircraft as evidence of a growing foreign influence.

There are several answers to this argument. The first, which seems obvious, is that any products liability protection granted a U.S. manufacturer is also going to protect a foreign manufacturer. There is no advantage to U.S. manufacturer vis-a-vis foreign competition granted by the bills before you. Both U.S. and foreign manufacturers selling aircraft in the U.S. are subject to the exact same product liability laws.

Second, U.S. manufacturers also argue that because they have a "tail" of aircraft stemming back to World War II, they need the protection to remain competitive in the marketplace. However, the so-called "tail of liability" problem is a self-correcting one as the years pass. Aerospatiale, the largest foreign competitor by far, has been selling its aircraft in the

U.S. since 1979 and has a considerable "tail" of its own that will only continue to grow. Furthermore, the "tail of liability" argument is flawed in that it is based on the shortsighted notion that foreign manufacturers intend to sell aircraft in the U.S. for only a short period and then pull out to avoid liability.

Third, the claimed invasion by foreign manufacturers is also blunted by the fact that the French products now being sold in the U.S. are not being sold at different market prices than U.S. aircraft. The Trinidad line of aircraft are competitive with aircraft from Beechcraft. The Falcon line of jets certainly has no price advantage over those produced by Beechcraft, Cessna and Gulfstream.

Fourth, virtually all of the aircraft sold in the United States today (save Falconjets) are produced in the United States. They are produced by workers in Kansas, Texas, Florida, Pennsylvania, Georgia, and in part, in many other states. Foreign aircraft, by and large, are not being imported into the United States particularly in the General Aviation market. Although some of the companies are owned by foreign manufacturers, the jobs that produce those airplanes are nearly all American jobs.

Finally, a comprehensive report prepared by the CRS (10/7/93) on the issue of foreign production of general aviation aircraft concluded that no "foreign invasion" has occurred and that U.S. manufacturers are clearly the dominant players in the international market and face no significant threat from foreign competitors. As further evidence of the U.S industry's dominance in the international marketplace, GAMA statistics indicate that between 1990 and 1993, U.S. manufacturers exported approximately 40% of their aircraft, a significantly higher percentage than the 30% export figures from the so-called industry peak in the late 1970's and early 1980's.

IV. Frivolous Suits Against Manufacturers are a Rarity

Manufacturers claim that they are constantly being subjected to frivolous lawsuits and are automatically named as defendants after any accident regardless of the underlying circumstances. As a plaintiffs' attorney, I can assure you that nothing could be further from the truth. Manufacturers are only sued when there is significant evidence of a design defect and the usual course of events is that the manufacturer is NOT named as a defendant.

Speaking from personal experience, I can tell you that we spend considerable time and money investigating the underlying circumstances of an accident before any lawsuit is filed. For example, I recently had a case involving a Cessna 172 aircraft that crashed due to an in-flight fire. At first glance it appeared that a design defect caused the crash, but we closely inspected the aircraft at our own expense and determined that a can of gasoline-additive that was on board caused the fire. That was the end of the case.

Manufacturers might be able to come up with a few limited anecdotal examples of frivolous suits against manufacturers, but quite simply, manufacturers are generally not sued unless there is significant evidence that they were at fault.

Conclusion

For the reasons I have outlined above, the statute of repose legislation before this Congress will do nothing to improve any problems of the general aviation industry because product liability is simply not responsible for reduced new aircraft sales. Reduced new aircraft are the result of numerous factors outside of product liability.

Even with these reduced new aircraft sales, however, the "collapse" of the general aviation industry has greatly exaggerated. Beech and Cessna are making record profits, GAMA shipments measured in total billings have risen steadily over the past decade, exports are at a record high, and the domestic industry is firmly entrenched as the dominant player in the international marketplace.

As a result, enactment of this legislation will not increase sales or aircraft production, create jobs, or otherwise improve the industry. The only effect this legislation will have is to reduce aircraft safety and to unfairly shift the burden of defectively designed aircraft onto the shoulders of innocent victims and their families instead of the manufacturer who failed to provide safety that the industry knows how to provide, but refuses to.

Congress has taken the lead in promoting safety in automobiles. Certainly, if the same type of safety were provided for aviation then no statute of repose would be necessary because we would not be facing the injuries being incurred as a result of technologically obsolete aircraft.

I would ask that instead of hastily revising the aviation tort system, this Congress turn its attention to the standards for safety as promulgated by the F.A.A. The aviation industry, in combination with many safety groups, and insurance companies, has reduced the number of crashes substantially. Unfortunately, there are still examples of aircraft, in use, which are unsafe and should be fixed. Standards for safety must be updated to provide passengers and pilots with safety that meets the current standards of technology. A quick "fix" to the tort system will not spare lives, it will only spread misery to those least able to afford it. The fix is to prevent the injuries in the first place.

SUMMARY OF ATTACHED CHARTS

1. **"An Industry in Crisis"** - GAMA sales measured in total billings have risen steadily over the past decade. This reflects the fundamental shift in demand towards jet aircraft production and counters manufacturers' claims that the U.S. industry is on the verge of "collapse".

2. **"The 'Demise' of the General Aviation Industry Has Been Greatly Exaggerated"** - When the staggering number of used aircraft sales are taken into account, it is evident that GAMA-reported sales are merely a small fraction of the overall U.S. sales activity.

3. **"Demand Has Simply Shifted To Used Aircraft"** - Between 1987 and 1992, there was an average of approx. 38,600 used aircraft sold per year compared to 1,138 GAMA aircraft sold per year. The high number of used aircraft sales indicate a glut of aircraft in the market.

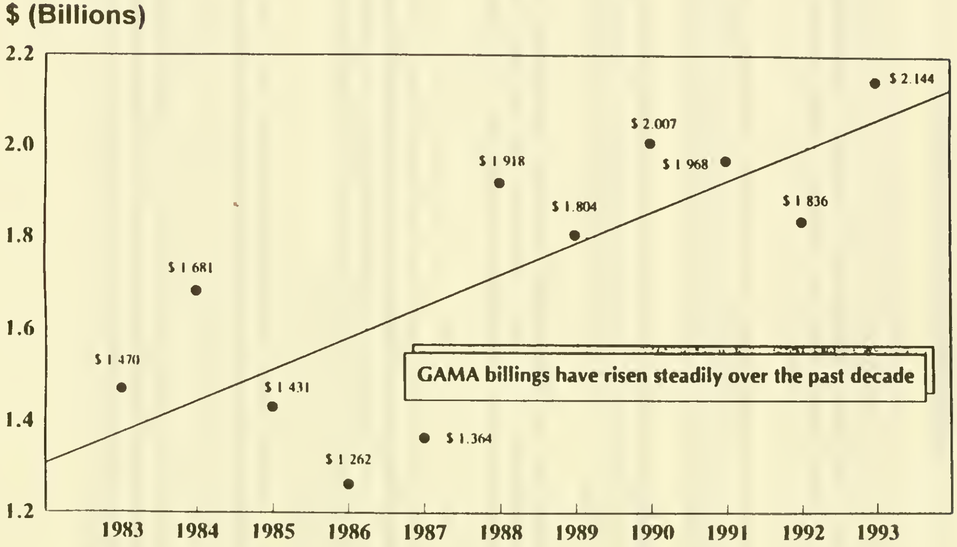
4. **"High Technology and Innovative Kit-Built Aircraft are Replacing the Traditional Piston Aircraft Market"** - There were 3.7 times as more kit-built sales in 1992 than new aircraft sales reported by GAMA. Kit-built sales are taking over the light aircraft segment of the market.

5. **"No Wonder Manufacturers are Abandoning Production of Piston Aircraft and Concentrating on Business Jet Production"** - Between 1988 and 1993, the average business jet sold for $7.5 million per unit, while the average piston aircraft sold for only $135,000 per unit. Because of such high per unit yields, Cessna and Beech make huge profits from a smaller quantity of aircraft sold.

6. **"The Decline in General Aviation Aircraft Shipments Reflects the Decline in Active U.S. Pilots"** - Active U.S. pilots have decreased by 144,112 since 1980. The reduced number of pilots combined with a glut of aircraft have caused slower sales of new aircraft.

7. **"How Can the Domestic General Aviation Industry Be 'Collapsing' When its Two Major Manufacturers Are Experiencing Record Profit?"** - Both Beech and Cessna are highly profitable, with pre-tax profits for each company estimated to be well over $100 million.

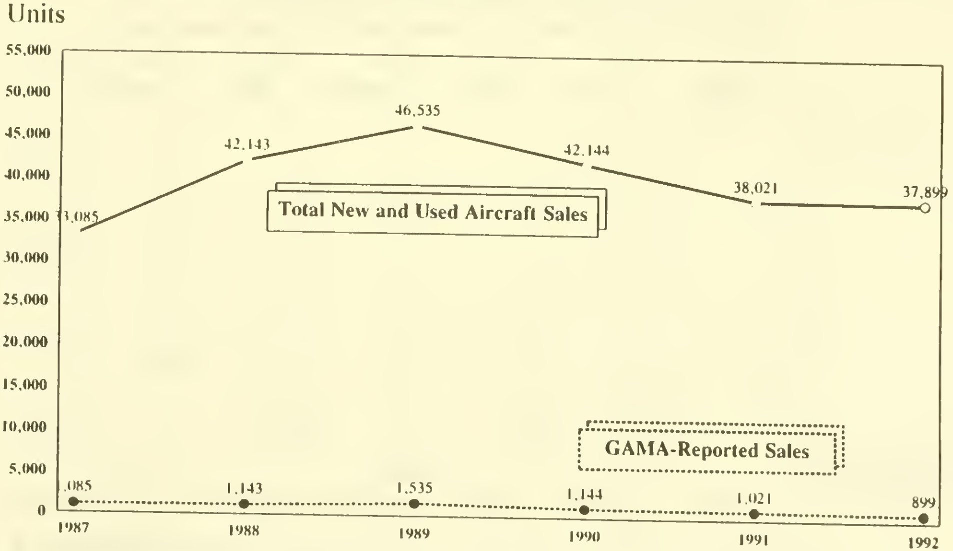
An Industry In Crisis?



Total GAMA Sales

Source: GAMA

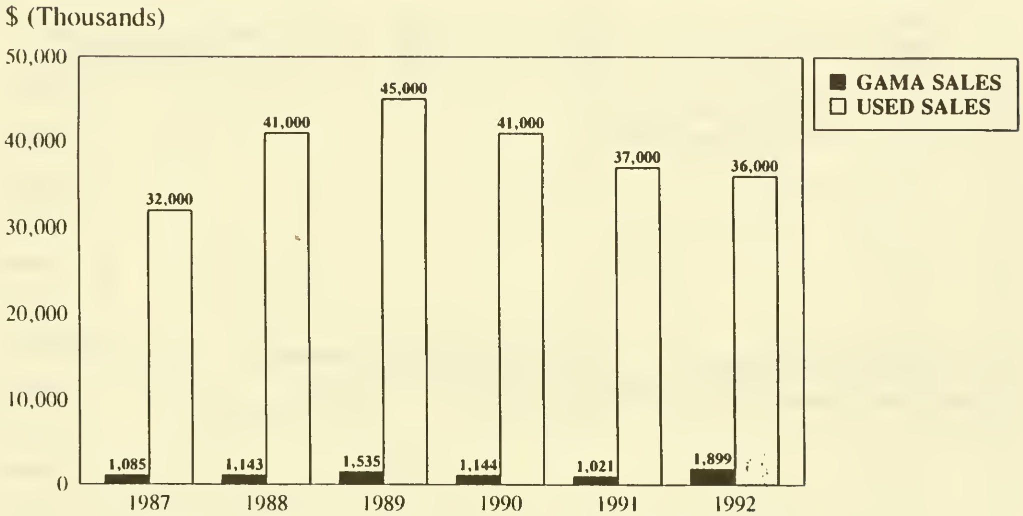
The "Demise" of the General Aviation Industry Has Been Greatly Exaggerated



Total General Aviation Aircraft Sales (New and Used) vs. GAMA-Reported Sales (1987 - 1992)

Source: GAMA
Aircraft Bluebook

Demand Has Simply Shifted To Used Aircraft

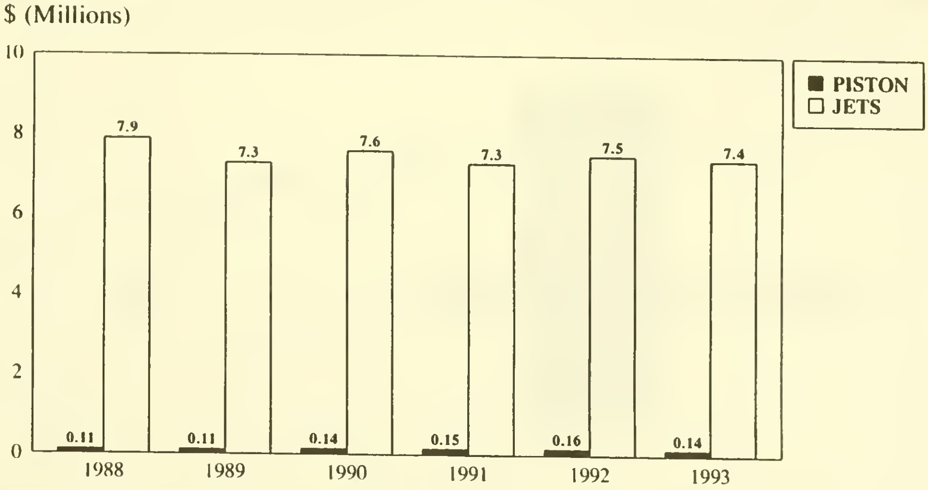


Estimated Used Aircraft Sales vs. Gama Sales (1987-1992)

*During this six-year period, there was an average of 38,600 used aircraft sold per year compared to 1,138 GAMA aircraft sold per year.

SOURCE GAMA
Aircraft Bluebook

No Wonder Manufacturers are Abandoning Production of Piston Aircraft and Concentrating on Business Jet Production

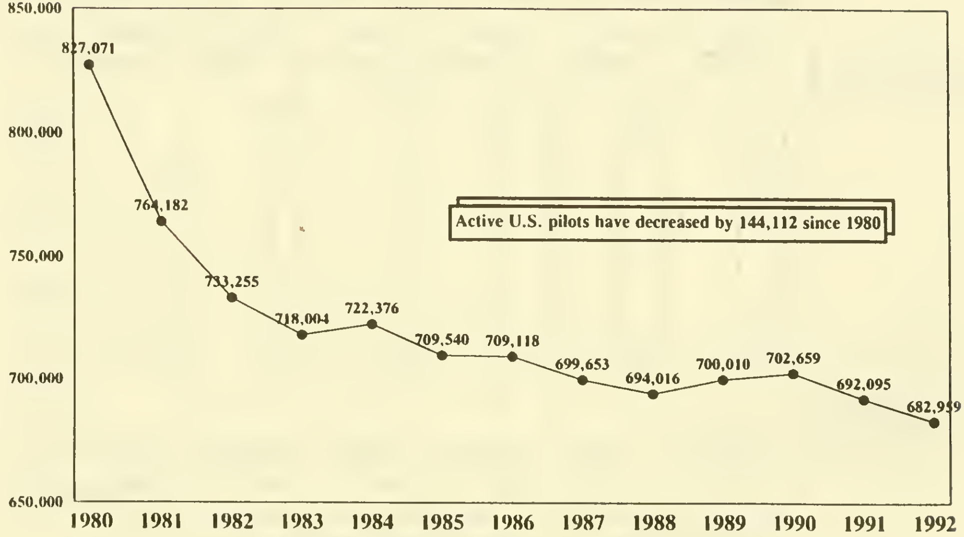


Per Unit Yield - Business Jets vs. Piston Aircraft (1988-1993)

*During this six-year period, the average business jet pulled in $7.5 million per unit sold, while the average piston aircraft made only $135,000 per unit sold.

Source: GAMA

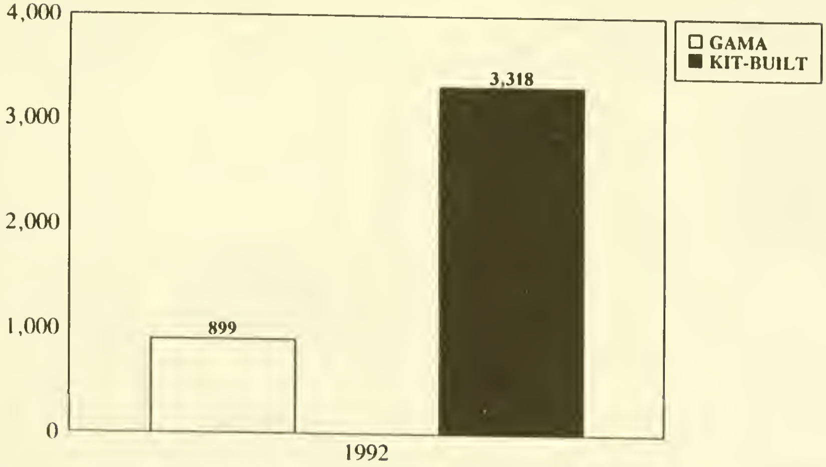
The Decline in General Aviation Aircraft Shipments Reflects the Decline in Active U.S. Pilots



Active U.S. Pilots (1980 - 1992)

Source: GAMA
FAA

High Technology and Innovative Kit-Built Aircraft are Replacing the Traditional Piston Aircraft Market



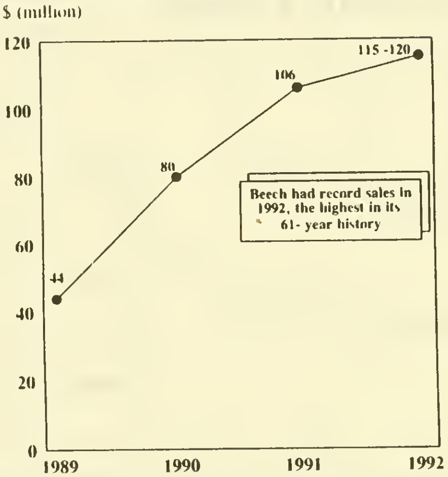
KIT-BUILT SALES VS. GAMA SALES (1992)

* There were 3.7 times more kit-built aircraft sales in 1992 than general aviation aircraft sales reported by GAMA.

SOURCE: GAMA

How Can the Domestic General Aviation Industry Be "Collapsing" When Its Two Major Manufacturers Are Experiencing Record Profits?

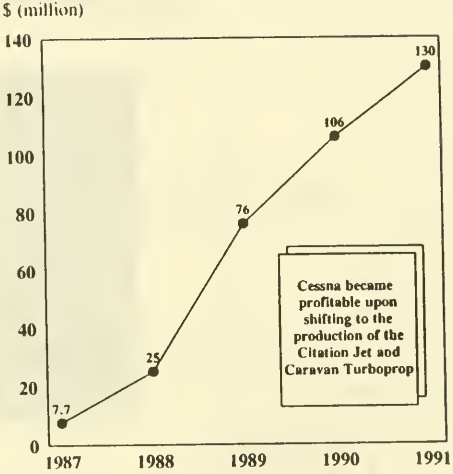
Estimated Beech Profits Before Taxes (1989 - 1992)



Beech had record sales in 1992, the highest in its 61- year history

Sources: *Aviation Week & Space Technology*
The Weekly of Business Aviation
Raytheon 1992 Annual Report

Estimated Cessna Profits Before Taxes (1987 - 1991)



Cessna became profitable upon shifting to the production of the Citation Jet and Caravan Turboprop

Sources: *Aviation Week & Space Technology*
Aviation Week
Wichita Business Journal

Beech & Cessna Are Highly Profitable

Mr. GLICKMAN. Mr. Creamer.

STATEMENT OF ROBERT B. CREAMER, EXECUTIVE DIRECTOR, ILLINOIS PUBLIC ACTION, ON BEHALF OF CITIZEN ACTION, CONSUMERS UNION, AND PUBLIC CITIZEN

Mr. CREAMER. Congressman, members of the committee, my name is Robert Creamer. I am here today representing Citizen Action, the Nation's largest public interest organization, with 3 million members nationwide.

I am the director of the Illinois affiliate of Citizen Action, Illinois Public Action. I am an IFR-rated private pilot with some 1,500 hours of total time. I fly regularly for both personal and organizational purposes, and have done so for about 10 years.

I have been close to flying all my life. When my father quit flying, he had 20,000 hours. My brother is a pilot and air traffic controller.

Let me say at the outset that both our organization and I strongly support general aviation and a vigorous general aviation industry.

It has been argued before this subcommittee that changes in the product liability system are necessary to rescue the general aviation industry from grave financial problems and stimulate the production of piston-engine aircraft. We believe that there is no evidence whatsoever that this bill will have the advertised benefits, that Congress and the aviation community have simply been sold a bill of goods. But we do believe that the evidence is overwhelming that it would be significantly reduce the manufacturer's financial incentives for safety and severely limit the rights of innocent victims of aircraft accidents to receive fair compensation for their injuries.

As you know, U.S. general aviation production peaked in 1978 with 17,811 airplanes. By 1983, production had plunged to 2,691. Sales hit a low point in 1986 with $1.26 billion. Total aircraft sales in 1993 were only 954 airplanes, a pretty bleak picture.

But the picture is not entirely dismal. As the gentleman to my right pointed out, total revenues from 1993 hit $2.1 billion, the highest since 1981. Beech, the only producer of a full line of aircraft including piston singles and twins, has consistently increased profits, $140 million 2 years ago, $182 million last year if you include the profits of its partner, Rayathon Jet.

The comeback of general aviation has been achieved on the strength of high value turboprop and jet aircraft, since only 3.5 percent of all general aviation revenue was for piston-powered aircraft.

As a whole, the general aviation sector has turned up—and without changes in the product liability laws. But what about the insignificant production of piston-powered aircraft? If we are to believe the proponents of this bill, product liability costs are a major cause of the collapse of this sector of the industry. In fact, there is no evidence that this is so.

There are currently——

Mr. GLICKMAN. You read rather rapidly. Can you slow down just a little tiny bit?

Mr. CREAMER. I would be happy to.

Mr. GLICKMAN. It is not that I want to hear what you are saying.

Mr. CREAMER. I want to get it in.

There are currently almost 200,000 piston singles and twins in operation in the United States. Last year, there were only 547 piston-powered airplanes built by domestic manufacturers. At that rate it would take 365 years to replace the entire fleet.

The problem, however, is not that product liability has driven up the costs so high that aircraft cannot be produced at reasonable prices. Piston-powered airplanes are available in a wide range of prices, as has been stated earlier here. A new Mooney single can be had for just over $150,000. That is not too bad for an airplane that will fly 200 knots and last 20 to 30 years. In fact, the average price of a piston-powered airplane sold in 1993 was approximately $134,000, according to the GAMA numbers.

These airplanes being sold and foreign aircraft being sold are subject to precisely the same liability standards that we are being told does not allow the production by Cessna and other manufacturers. The problem is not one of excessive costs; the problem is one of limited demand. Pilots, businesses, flying clubs, fixed base operations, none of them buy new airplanes because they can get essentially the same thing for less money in a used airplane.

From a pilot's point of view, I would just as soon fly a 15-year-old Beech Bonanza as a brand new Beech Bonanza. The speed and basic handling are about the same. Most of the innovations in piston-engine aviation have been in avionics. But you can have those innovations by buying new avionics and putting them in the used airframe. Engines must be completely traded out after a certain period of time.

The fundamental problem is that piston aircraft on the average are used about 155 hours a year. The airframes may have an effective life of 9,000 to 10,000 hours or much more if they are maintained properly. There is no incentive to buy a new aircraft when you can pay half or a fourth the price to get essentially the same airplanes on the used market.

So, in other words, in the 1950's and 1960's, the industry glutted the market with airplanes. The market matured and new sales collapsed. This had nothing whatsoever to do with the price of product liability, except that the cost of meeting the liability exposure for the entire fleet had to be spread over a greatly reduced number of new unit sales.

Now, this glut did not occur in the higher end of the market. Innovation in engine and fuel efficiency technology, reliability and speed meant money to corporations that bought high-end aircraft. A general aviation company could make a good case to a customer that he should sell his slower prop jet and get an equally fuel efficient jet, and so sales in that sector have continued to grow.

What would be the effect of lowering the payouts of companies on product liability? Would it dramatically increase piston aircraft sales, which is the core argument here?

The industry has failed to provide accurate or verifiable data on closed claims in product liability cases, so it is difficult to know what percentage of total costs actually do go for product liability. But let's use for the sake of argument the wildest estimates made by industry sources for any single year and assume that 10 percent of annual revenues, of about $2 billion, or $210 million is the number. We estimate, by the way, that if a real closed claims survey were done, it would probably be closer to 3 to 5 percent of total costs.

Let's say this bill passed, and it cut liability costs in half, which is a generous estimate. Using the industry's highest estimate, then, of costs, that would reduce their total costs by 5 percent. Only 5 percent.

Let's further assume that all of that savings was passed on to consumers in the form of lower prices, another unlikely assumption. Would that reduction of 5 percent stimulate thousands of pilots to buy a new airplane instead of staying in the used market when they can get essentially the same airplane for half or third the price? Would it boost sales from 600 planes to 10,000? Of course it wouldn't.

The irrelevancy of this proposal to the aircraft market is even clearer when the practices of the liability insurance industry are taken into account. We all know the spike in that price that occurred in the 1980's had precious little to do with the underlying claims. It had to do with investment markets. It had to do with the so-called insurance cycle. That is why when Randy Greene, who founded Commander Aircraft (that has begun manufacturing the Rockwell Commander single-engine airplane and is subject to all the liability tail of the previous manufacturer plus the new liability of his new aircraft he is making) at the beginning of his venture was very concerned about his product liability costs.

Then he was quoted in May 1991 in Flying magazine as saying that he had received liability insurance quotes one-third of those he had received 2 years before. Greene said he was "mystified" by the system that sets premiums for liability insurance, because without any limitation on product liability claims, Greene's company had received a two-thirds reduction in product liability costs because of lower insurance rates, much more savings than would occur as a result of this bill.

Now, while this bill will not improve substantially the demand for piston airplanes, it will in fact cut manufacturers' costs. Of course, we could have the same effect by cutting the wages of employees or cutting taxes or providing an outright Federal subsidy to the industry. We don't believe that such a subsidy is warranted in the marketplace, particularly not out of the pockets of victims. Limiting the rights of victims to recover damages has two terrible side effects: it reduces the financial incentive to safety, and it takes money from those who should be the last to contribute, the victims of accidents.

The FAA regulations prescribe minimum standards for construction of aircraft. We believe that the economic incentive of corporate liability is the single most important factor leading to safer products in this market and any other. The provisions of this bill are aimed explicitly at limiting that liability.

Whether a 15- or 18-year statute of repose, this bill will provide a disincentive to produce long lasting aircraft.

And why should a victim of an accident caused by a defect on an 18-year-old general aviation aircraft be unable to recover damages, just because the aircraft is over a specific age? Today two-thirds of all general aviation aircraft are over 18 years old.

It is often fashionable to rail against the unfair jury awards. But the fact of the matter is that the jury system is the most democratic aspect of our political system. Jurors do not receive big campaign contributions from political action committees. They don't get fame or acclaim for their public service. Usually at some sacrifice, they sit in impartial judgment of what is a fair resolution of a conflict.

Now, juries do not always make the right decisions. Neither do elected public officials. But we don't discontinue the system because of those mistakes. When jurors make decisions that award victims large sums of compensation, they are usually awarding compensation for individuals who have lost the use of their limbs or their eyesight or their mental or physical functions. They are making awards aimed at paying for years of future medical care. They make awards to the survivors of the dead that can no longer have sources of support. Should these people be asked to subsidize the general aviation industry?

If so, there better be a very good case that it is in the public interest. We don't believe that that case has been made.

[The prepared statement of Mr. Creamer follows:]

STATEMENT OF ROBERT B. CREAMER

CITIZEN ACTION

Mr. Chairman, members of the Committee, my name is Robert Creamer. I am here today representing Citizen Action, the nation's largest public interest organization, with 3 million members nationwide.

I am the Director of the Illinois affiliate of Citizen Action, Illinois Public Action. I am an IFR-rated private pilot with some 1,500 hours of total time. I fly regularly for both personal and organizational purposes and have done so for the last 8 years.

I've been close to flying all my life. When my father quit flying he had over 20,000 hours. My brother is both a pilot and an air traffic controller.

Let me say at the outset that both our organization and I strongly support general aviation and a vigorous general aviation industry.

It has been argued before this Committee that changes in the product liability system are necessary to rescue the general aviation industry from grave financial problems and to stimulate the production of piston engine aircraft. We believe that there is no evidence whatsoever that this bill will have these advertised benefits. But we believe that the evidence is overwhelming that it would significantly reduce the manufacturer's financial incentives for aircraft safety and that it would severely limit the rights of the innocent victims of aircraft accidents to receive fair compensation for their injuries.

LIABILITY COSTS AND AIRCRAFT SALES

First let me turn to the effect of liability costs on the financial problems of general aviation. As you know, U.S. general aviation production peaked in 1978 with 17,811 airplanes. By 1983 production had plunged to 2,691. Sales hit a low point in 1986 with $1.26 billion. Total aircraft sales in 1993 were only 954 airplanes. Apparently a pretty bleak picture.

But the picture is not entirely dismal. Total revenues in 1993 hit $2.1 billion, the highest level since 1981. Beech, the only producer with a full line of aircraft including piston singles and twins, had consistently increasing profits -- $140 million in 1992 and $182 million when combined with its new partner Rayathon Jet in 1993. The come back of general aviation has been achieved on the strength of high value turbo prop and jet aircraft -- since only 3.5% of all general aviation revenue was for piston powered aircraft.

As a whole, the general aviation sector has turned up -- and without changes in the product liability laws. But what about the insignificant production of piston powered aircraft? If we are to believe the proponents of this bill, product liability costs are a major cause of the collapse of this sector of the industry. In fact, there is no evidence that this is so.

There are currently almost 200,000 piston singles and twins in operation in the United States. Last year there were only 547 piston powered airplanes built by domestic manufacturers.

At that rate it would take almost 365 years to replace the entire fleet. The problem however is not that product liability has driven up the costs so high that aircraft cannot be produced at reasonable prices. Piston powered airplanes are available at a wide range of prices. A new Mooney single can be had for just over $150,000 -- not bad for an airplane that will fly 200 knots and last 20 to 30 years. A single engine Maule, an airplane much like a Cessna 172 except slightly faster, can be bought new for $73,000. In fact, the average price of a piston powered airplane sold in 1993 was approximately $134,000 according to the GAMA numbers.

The problem is not one of excessive cost; the problem is one of limited demand. Pilots, businesses, flying clubs, fixed base operations -- none of them buy new airplanes because they can get essentially the same thing for less money in an used airplane.

From a pilot's point of view, I would just a soon fly a 15-year old Beech Bonanza as a brand new Beech Bonanza. The speed and basic handling are about the same. Most of the innovation in piston engine aviation have been in avionics. But you get those innovations by buying new avionics and putting them in the used airframe. Engines must be completely traded out after a specific time.

The fundamental problem is that piston aircraft on the average are used from 150 to 300 hours per year. In fact, average utilization of general aviation aircraft dropped from

197.4 hours per year in 1970 to 153.8 in 1987. The airframes may have an effective life of 9000 to 10000 hours or much more if they are maintained properly. And they maintain their value on the used market. You can buy a 10-year old Beech Bonanza, fly it for ten more years, and sell it for more than you paid for it.

There is simply no incentive to buy a new aircraft when you can pay half or one-forth the price and get essentially the same airplane on the used market.

In other words, during the 1950's, 60's and 70's the industry glutted the market with airplanes. The market matured and new sales collapsed. This had nothing to do with the costs of product liability, except that the cost of meeting the liability exposure of the entire fleet had to be spread over a greatly reduced number of new unit sales.

This glut did not occur in the higher end of the market. Innovation in engine and fuel efficiency technology, reliability and speed meant money to the corporations that bought high-end aircraft. A general aviation company could make a good case that a customer should sell a slower prop jet to get an equally fuel efficient jet, and so sales in that sector have continued to grow.

What would be the effect of lowering the payouts of companies on product liability? Would it increase piston aircraft sales? The industry has failed to provide accurate, verifiable data on closed claims in product liability cases, so it is difficult to know what percentage of total costs go for product liability. Let us use, for the sake of argument, the wildest estimates made by industry sources for a single year and assume that 10% of the annual revenue of $2.1 billion dollars ($210 million) is the number. (We estimate, by the way, that if a real closed claims survey were conducted, the actual number would be much lower -- probably in the 3% to 5% range of total costs.)

Let's say H.R. 3087, if enacted, were to cut manufacturers' liability cost in half. Using the industry's highest estimate, that would still reduce total costs by only 5%. And let's further assume that all of these savings were passed along to customers in the form of lower prices. Would that reduction of 5% stimulate thousands of pilots to buy a new airplane instead of staying in the used market where they can buy essentially the same airplane for one-half or one-third the new plane price? Would it boost sales from 600 planes to 10,000? Of course not.

To significantly increase piston engine sales requires one of three factors: a significant increase in the number of piston engine pilots and hours flown; product innovation that gives a purchaser a reason to buy a new instead of used aircraft; or the rapid deterioration of many older piston airplanes.

The first of these factors is not in the cards. The FAA predicts the number of piston aircraft and the pilots and hours flown in them will remain stable for the next decade. I am unaware of any major short term innovation in airframe construction in the piston market. Some older aircraft are beginning to deteriorate today and we should as a result see some resurgence in the piston market, but nothing like the boom years two decades ago.

Simply put, the product liability laws will have no effect on these trends.

PRODUCT LIABILITY INSURANCE

The irrelevancy of this proposal to the piston aircraft market is even clearer when the practices of the liability insurance industry are taken into account. Though some of the largest manufacturers self-insure for a portion of their liability, virtually all purchase some quantity of product liability insurance. The smallest manufacturers (some of whom have been particularly aggressive at marketing single-engine piston aircraft) depend entirely upon the liability insurance industry.

What effect would this law have on product liability insurance rates? Our experience with changes in the tort laws at the state level shows no relation at all. The reason is that liability premiums did not go up in the 1980's mainly because of the costs of claims. They went up because of conditions in the investment markets, changes in insurance industry investment practices, and the so called "insurance cycle." Liability rates in most lines of business peaked in the so called "hard market" of the mid-80's and have fallen since. None of these changes in premium price -- up or down -- has had any relationship to fluctuations in the volume of underlying claims.

Randy Greene founded Commander Aircraft that has once again begun manufacturing the Rockwell Commander single engine airplane. At the beginning of his venture, he was very concerned about product liability insurance rates. He was quoted in the May, 1991 issue of Flying magazine as saying that he had received liability insurance quotes one-third of those he received two years before. Greene said he was "mystified" by the system that sets premiums for liability insurance. Without any limitation on product liability claims, Greene's company has received a two-thirds reduction in product liability costs because of lower insurance rates -- more savings than he could possibly have achieved through this proposal. We would suggest that Congress much more effectively cope with product liability costs by addressing the practices -- and especially the uncompetitive nature -- of the liability insurance industry.

IMPACT ON AIRCRAFT SAFETY

While H.R. 3087 will not improve demand for piston engine airplanes, it may cut manufacturer's costs. Of course we could have the same effect by cutting the wages of employees, or cutting taxes, or providing an outright subsidy to these companies. We do not believe such a subsidy is warranted in this marketplace. But more important, limiting the rights of victims to recover damages has two terrible side effects: it reduces the financial incentive to safety and it takes money from those who should be the last to contribute -- the victims of accidents.

FAA regulations prescribe only minimum safety standards for the construction of aircraft. We believe that the economic incentive of corporate liability is the single most important factor leading to safer products in this market. The provisions of this bill are aimed explicitly at limiting this liability.

The eighteen year statute of repose eliminates a major financial incentive for manufacturers to build safe, long lasting aircraft.

I can see why manufacturers want this bill. Cessna is currently liable for any accident that is the result of the negligent production or design of any of the 160,000 aircraft it has built that is still in service. Under this bill Cessna would be liable for only the 21,000 aircraft (only 13% of the total) that were built after 1976.

One of the reasons that Commanders have a low liability insurance cost is that their accident rate and the number of modifications that have been needed to correct aircraft problems is lower than some of their competitors. That is exactly the incentive that the product liability system should provide.

And let us not count entirely on FAA regulation. The FAA did not require shoulder harnesses until 1973, even though it was known for years that they would materially cut down on fatalities in crashes.

EFFECT ON VICTIMS OF ACCIDENTS

In the final analysis this bill asks the victims of accidents to subsidize the manufacturers and sellers of general aviation aircraft. Why should a victim of an accident caused by a defect in a 18-year old general aviation aircraft be unable to recover damages, just because the aircraft is over 18 years old?. Today close to 2/3 of all general aviation aircraft are over 18 years old.

It is often fashionable to rail against unfair jury awards. But the fact of the matter is that the jury system is the most democratic aspect of our political system. Jurors do not receive big campaign contributions from political action committees. They don't get fame or acclaim for their public service. Usually, at some sacrifice, they sit in impartial judgement of what is a fair resolution of conflict. Now juries do not always make the right decisions. Neither do elected public officials. But we don't discontinue the system because of the mistakes.

When jurors make decisions that award victims large sums of compensation, they are usually awarding compensation to individuals who have lost the use of their limbs or their eyesight or their mental or physical functions. They are making awards aimed at paying for years of future medical care. They are making awards to the survivors of the dead that no longer have sources of support.

Should these people be asked to subsidize the general aviation industry? If so, there better be a very good case that it is in the public interest. We believe that there is no such case. We ask you to vote no on H.R. 3087.

STATEMENT OF PROFESSOR RONALD O. STEARMAN, AEROSPACE ENGINEERING AND ENGINEERING MECHANICS DEPARTMENT, THE UNIVERSITY OF TEXAS AT AUSTIN

Mr. GLICKMAN. Mr. Stearman, it is a pleasure to have you. You may have your 5 minutes now.

Mr. STEARMAN. Mr. Chairman and members of the Economic and Commercial Law Subcommittee, thank you very much for inviting me to these hearings and letting me express my opposition to a general aviation statutes of repose bill. I am testifying against this bill today from the standpoint first of an aerospace engineering design professor who attempts to teach others how to minimize serious design flaws in our future product.

Case studies represent some of our activity in the class and one of these is concerned with the British Comet. The British Comet was the first commercial jet airliner to make it into the market, into commercial operation in the early 1950's. Basically, they had the lead in this early era, and unfortunately, due to a serious structural design defect, coupled with manufacturing quality control problems, the British encountered several disasters, aerospace disasters. This basically testified to the fact that the aircraft life was roughly 1 year in service.

This is all occurring, gentlemen, without the presence of a product liability factor. The phenomenon leading to this design defect was also known by the early 1920's. Basically, it is the result of poor engineering design. Fortunately, the Boeing Company, who anticipated the problem, was able to recover the business, and they continue to be the leader today through good engineering design practice.

I also speak as a consultant from both the industry and the legal profession, and in addition have been a victim of a general aviation accident some 36 years ago, and I have since become a pilot to try to contain better control over my flying experience.

Mr. Chairman and members of the subcommittee, I am not here today to talk about competitiveness, the competitiveness of the general aviation industry, or product liability costs, or who is to blame for the state of the industry.

My area of expertise and what I am here to talk about today are the issues of aviation safety, the positive role that product liability suits play in improving the crashworthiness of general aviation aircraft. Based on my experience I will demonstrate with a case study, that the enacted 15- to 18-year statute of repose would significantly reduce aviation safety and eliminate economic incentives for manufacturers to improve the safety of their product.

I would like to start out with the chart, seen as enclosure 1, from Congressman Glickman's bill and put forth by GAMA, that the average aircraft age is approximately 27 years old. According to these statistics, a 15-year statute of repose would essentially eliminate the liability for 82 percent of the current fleet, which includes two very popular best-selling, high-performance single-engine aircraft that have serious design flaws.

We are eliminating the customer base that we are trying to win back through new aircraft sales. The elimination of that customer base is, furthermore, not based upon mean time to failure of the product, but on an arbitrarily drawn line which appears to promote aircraft sales and basically remove the companies from the liability responsibility.

The case study that I would like to present is shown as enclosure 2 in your handout, and it represents the accident time history basically of an aircraft with serious design flaws that have existed through approximately its 40-year life history. Attempts that have been made to correct these flaws are also indicated. They extend well beyond twice the proposed statute of repose limitation. It took approximately 30 years to correct this flaw, which—an example, there are several, but let's take the example starting in 1956, when the aircraft, as element 1 indicates, was modified in the tail structure to expand the growth of the aircraft and counter for the heavier engine and increased need for maneuverability.

The customer base began to notice approximately 1½ to 2 years later that the tail was not structurally sound, that there was—they were trying to get two consultants in California by the name of Culver and Cathaway to correct the defect. These two engineers designed a fix not unlike the fix that finally came some 30 years later, and they sent this to the FAA.

Basically the aircraft accidents were occurring in the horizontal tail section, and you could stack the resulting tail structures as damaged like chairs as the years progressed. There was a single characteristic signature indicating a defect.

If we could look back at the history then, the picture, again, enclosure 2, I would like to carry you through the stages of this and show you that it took approximately twice the statute of repose proposed here to correct the defect, which was occurring in the first year and a half after the modification. That is, it was observed and identified after the first year and a half on the market.

Again, as you see here, Beech successfully defended a good many accidents in product liability lawsuits through the ages, and the aircraft continued to come down actually at a rate which varied depending on the date you looked at it, in some cases 24 times more frequently than their straight tail inverted T counterpart. The aircraft were identical except for the V-tail signature.

It was not until actually 1979 when a young professional pilot was killed in the routine of his work that a landmark product liability litigation case was started. Landmark, because Beech did not lose a single case in this liability issue about this defect until the start of this litigation in 1979.

Notice also that as it became more evident to the public as to what the problem was, there is a decline in the accidents. The warning had started to come out, and people and the pilots became more cautious. There is a decline in the accident scenario, as you can see from this history.

Basically, another accident occurred, Item 4. Mr. Crocker, a member of the American Bonanza Society, was killed. He was a prominent member of this society, and the American Bonanza Society mustered its membership, the Bonanza pilots, to ask the FAA to reinvestigate the certification of this aircraft. The investigation was passed on to the Department of Transportation research committee. Item 6 shows that in 1985, the preliminary finding of the DOT committee was such that the defect was identified.

One of the defects was identified, and 6 and 7 represent the trials, the first trial ending in a hung jury, the second trial, awarding the plaintiff the first award against the V-tail Bonanza.

Basically, the company was asked and ordered by the FAA to fix the product. But it is unfortunate that it took 30 years to do this. This is twice the length of time proposed for the statute of repose.

Congressmen, once again I urge that this subcommittee reject this legislation so that aviation safety issues do not become subject to manufacturers' profits.

I appreciate the opportunity to express my views concerning the legislation, and request that my testimony be retained.

[The prepared statement of Mr. Stearman follows:]

STATEMENT
of
Ronald O. Stearman
Bettie Margaret Smith Professor in Engineering
Dept. of Aerospace Engineering and Engineering Mechanics
The University of Texas at Austin
Austin, TX
and Aviation Consultant
Austin, TX

Mr. Chairman and Members of the Economic and Commercial Law Subcommittee, thank you very much for inviting me to these hearings and letting me express my opposition to a general aviation statute of repose. I should emphasize that my testimony is not to be interpreted as a reflection of the attitude of The University of Texas toward this bill, but as my professional opinion after attempting to interpret the implications of this proposed legislation.

I am testifying against this bill today from an academic standpoint as an aerospace engineering design professor who attempts to teach others how to minimize serious design flaws in our future products. My perspective will also be based on my experience as a consultant both to the industry and the legal profession. In addition, I can speak from a victim's perspective in that I was seriously injured while riding as a passenger in a general aviation aircraft some thirty-six years ago, and I have since become a pilot to try to gain better control over his flying experience.

Mr. Chairman and Members of the Subcommittee, I am not here today to talk about the competitiveness of the general aviation industry or product liability costs or who is to blame for the state of the industry. My area of expertise and what I am here to talk about today are the issues of aviation safety, the positive role that product liability suits play in improving the crashworthiness of general aviation aircraft, and the general accountability of the manufacturers to the customers who are buying their product. Based on my experience, I believe that enactment of a 15 or 18 year statute of repose provision would significantly reduce aircraft safety and eliminate all economic incentives for manufacturers to improve the safety of their aircraft.

I would like to start by pointing out that statistics provided by the General Aviation Manufacturer's Association (GAMA) indicate that the average age of the U.S. General Aviation fleet is approximately 27 years old. (See Enclosure #1) According to these statistics, an 18 year statute of repose would essentially eliminate manufacturers' liability for 70% of the current fleet, including at least two very popular, best selling, high performance single engine aircraft that have very serious design flaws - the Beechcraft V-Tail Bonanza and the Cessna 210. A few other less popular models with design defects would also be on the list, such as the Piper Cherokee series models and their derivatives. I am not trying to imply that serious design defects exist in every aircraft in the fleet, but design defects do exist in a significant number of aircraft models. Unfortunately, some of these aircraft were the most popular and best selling aircraft in recent history.

While it is difficult to speculate in today's complex economy how product liability fits within the many more significant factors affecting the economics of the general aviation industry, if it fits in at all, the influence of product liability on aircraft safety is more definitive. Thanks to the product liability litigation process, the knowledge of numerous design defects which have been successfully suppressed by manufacturers until recently and slipped by the FAA's outdated certification procedures, are becoming known to the consumer. The FAA's procedures are outdated because of a "grandfather" clause that allows new aircraft based on old designs to be certified under old safety standards and not current standards. As more design defects have been uncovered in large part due to litigation, accident rates have declined and manufacturers have been forced to pay more attention to safety issues rather than mere profits. (See Enclosures #2 and #4) Enactment of a statute of repose would severely jeopardize this improving trend in aviation accidents. I also raise the possibility that the statute of repose legislation might have been designed to force the new aircraft sales issue upon the customer through selective liability coverage.

It seems that during the so-called "good times" in general aviation, an excessive design growth was occurring in a number of popular aircraft, such as the Beechcraft V-Tail Bonanza, the Cessna 210's and the Piper Cherokee series, and this growth was driven by an increased pressure to meet the competitive market demands. It is in such an environment that design defects often occur because stretching an already existing aircraft design beyond its limits can also press the design and testing engineers beyond their performance limits. In addition, when an aircraft is selling well and profits are high, a manufacturer, at least for the short term, does not have to improve the safety of the aircraft. Lack of aircraft improvement, however, can have a disastrous long term marketing influence and reduce safety. Another factor that possibly allows design flaws to go unchecked is the current aircraft certification process which allows the Federal Aviation Agency, which is highly understaffed, to designate engineers employed and paid by the company, to control in the certification process. This is like using the fox to guard the henhouse.

I also find it troublesome when I hear it argued by proponents of the 18 year statute of repose that most all of the design defects will be identified and fixed during this period. This is simply not the case. Many defects do not manifest themselves, or are uncovered yet suppressed and not remedied, until well beyond 18 years.

As evidence to support my above statements, I will use a case study of the Beechcraft V-Tail Bonanza. Enclosure #2 is an illustration of the V-Tail's accident statistical data base over time. This actual accident history of a well-known aircraft will show that the concept of an early defect identification by the manufacturer and an adequate fix has not been the prevailing experience for the more serious design defects. Incidentally, this aircraft was one of the two very popular aircraft mentioned earlier. The unique "V" or "butterfly" tail made it one of the more distinctive general aviation aircraft in the fleet. Over 10,000 of these "V" Tail Bonanzas were made and sold since the 1940's, and those that have not crashed remain active today.

In 1956, Beech developed a Model 35C Bonanza with an increased horsepower and engine size to improve the Bonanza performance. (See Point # 1 on Enclosure #2) To save on tooling costs the tail size was increased in width or chord but no additional tail supporting structure was added to the fuselage. It is this action that initiated the defect in the V-Tail design, a defect which, by the way, causes complete in-flight breakup of the aircraft.

In the Fall of 1957, evidence of the defect were uncovered by Beech when some Bonanza owners were requesting engineers R.G. Cathaway and IRV Culner to come up with an add-on structural modification to strengthen the new Bonanza tail and cure the defect. [1] These engineers came up with design modifications to fix the problem and these modifications were sent to the appropriate FAA and NTSB officials. (See Point #2 on Enclosure #2) The FAA recommended that Beech investigate the appropriate tail modification, but after conducting some studies, Beech for some reason dropped the suggestion and did nothing to fix the problem [2].

Because Beech did not fix the defect, crashes of the V-Tail Bonanza began to mount. As one investigator Brent Silver stated, "you could stack the damaged tail structures from successive accidents together like chairs" [3]. (See Enclosure # 3 for illustration of damaged tail structure) As the accidents continued and Beech won every product liability suit encountered by vigilantely denying any defect with the V-Tail design, Brent Silver, an Aviation Consumer Editor, became concerned over the fact that more than 2% of the fleet were experiencing in-flight structural breakups [3]. Although Silver campaigned for several years to correct the defects, Beech again did nothing and no significant progress was made until the death of a young professional pilot. Joseph Beyer, in 1979. (See Point # 3 on Enclosure #2) Not surprisingly, it was at this time that Mr. Beyer's landmark products liability suit was being formulated [4].

As a side note, because Beech did nothing despite clear evidence of a problem, a small fixed-based owner, Mike Smith of Mike Smith Aero in Johnson, Kansas, actually developed his own modification kit to strengthen the tail for concerned owners and made a successful business of it. Several of his modifications are still flying on these aircraft today [5]. Mike Smith later developed a straight tail modification of the V Tail Bonanza based upon the significantly improved accident statistics for the Straight Tail Bonanza [6].

A few years later in 1984, a second accident occurred (See Point #4 on Enclosure # 2) The pilot involved, Mr. Crocker, was a well-known American Bonanza Society member and the Society decided, with the backing of many of its members, to ask the FAA for a certification reevaluation of the Bonanza "V" tail aircraft. In early 1985, the FAA commissioned the Department of Transportation to commence a reevaluation of the aircraft design with a preliminary DOT evaluation occurring [7]. (See Point # 6 on Enclosure # 2) Also, at about this time, the first product liability trial deriving from the Beyer accident ended in a jury deadlock

(See Point #5 on Enclosure #2) , but the second trial later in 1985 resulted in a landmark product liability award to the pilot Beyer's family. (See Point # 7 on Enclosure # 2).

It is only after the economic pressure of this product liability award and the DOT findings that Beech finally began to take steps to remedy the structural defect in the V-Tail that it had knowledge of back in 1957. It took 30 years of cover-up and stalling before Beech started to fix the problem - well beyond the 18 year repose period offered by this legislation. Today almost 250 V-Tails have crashed and approximately 500 people have died due to the defect.

This case study on the V-Tail is but one example and it is not difficult to find a number of other examples of aircraft with accident histories where similar time lapses and cover-ups occur before attempts are made by the manufacturer to correct design defects. Based upon past experience I feel many significant design defects will not be remedied within the 18 year statute of repose, thereby leaving the consumer with very little or no protection against hidden design defects.

Yet another factor that may cause a latent design defect to exceed the statue of repose is that no accident is caused by only one single event. Instead, a series of events must chain together to produce the accident. Experience has shown that a defective seat track locking pin or a defective seat belt could lie dormant until the right series of events chain together to create the accident. It is certainly plausible that this could take more than 18 years.

Once again. I urge that this Subcommittee reject this legislation so that aviation safety issues do not become subjugated to manufacturers' profits. I appreciate the opportunity to express my views concerning the legislation of the General Aviation Revitalization Act and request that this testimony be retained in the record.

FOOTNOTES

[1] Carran, John A., "Memorandum to Beech Aircraft, Attn: Virgil H. Adamson, Administrative Engineering," February 18, 1958, including enclosures from Cathaway and Culver, October 30, 1957.

[2] "Investigation of Model J-35 V-Tail With and Without Stabilizer Leading Edge Support, Beech SAR 49-977 Report, February 24, 1959.

[3] Silver, Brent, "The V Tail Bonanza -- Breaking of a Legend," *Consumer Aviation*, 1985 Pilot's Yearbook, pp. 23-38.

[4] Hogan, R. Ben, II, "The V Tail Bonanza -- A Turbulence Trap," June 1986 Trial, pp. 68-72.

[5] "The 'V' Tail Controversy," *Aviation Magazine*, November 1984.

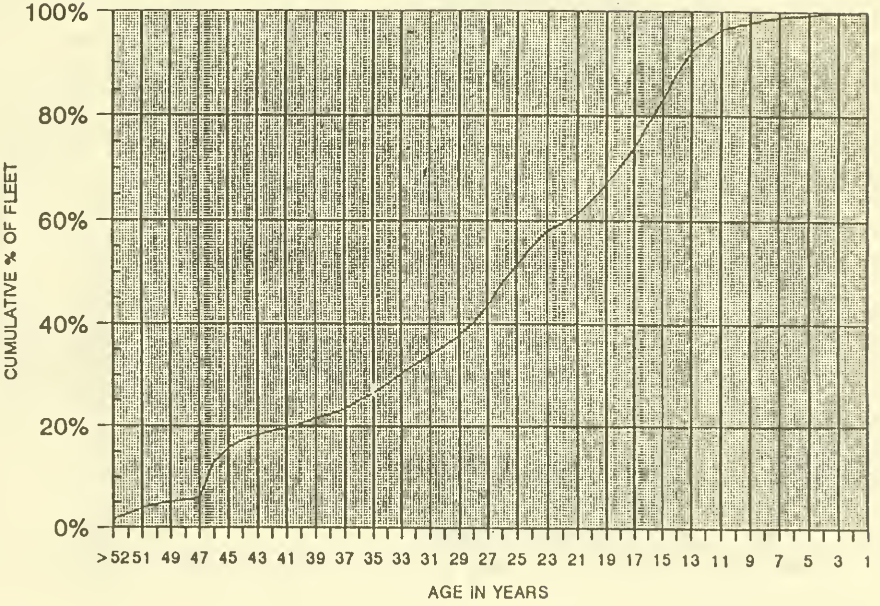
[6] Cook, LeRoy, "In Bonanza Country 'V' Stands for Victor," March 1986.

[7] "Task Force Report -- V-Tail Bonanza Investigation," U.S. Department of Transportation, Federal Aviation Administration, Transportation Systems Center, Volumes I & II, January 1986.

ENCLOSURE 1

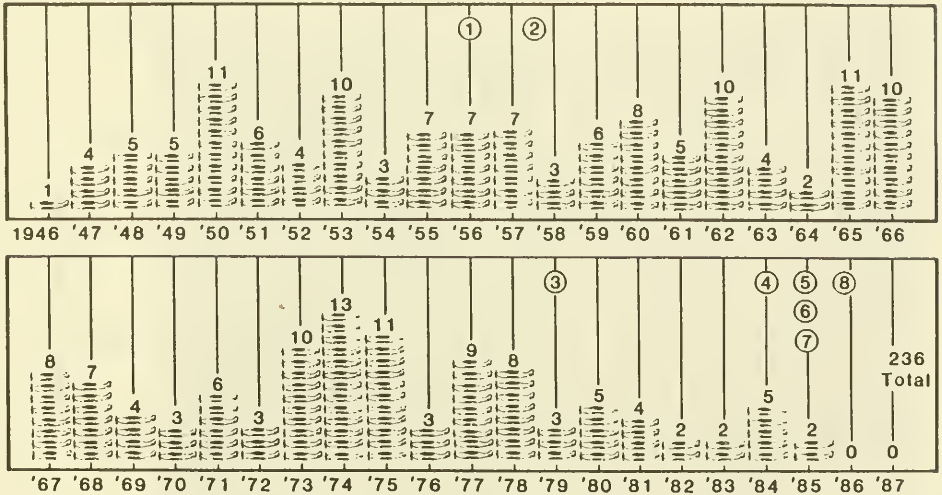
AGE OF THE U.S. GENERAL AVIATION FLEET

(DEC 92)



Registered Aircraft

Year-by-Year Analysis of V-Tail Bonanza In-Flight Breakups



① 1956 - Growth factor initiates design defect in tail, starting with Model C

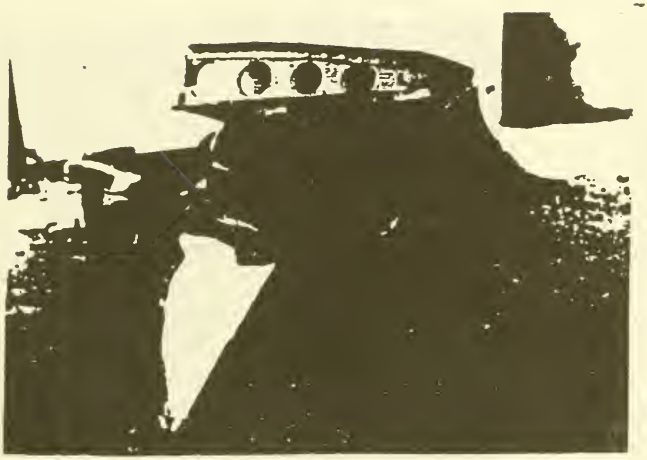
② 1957-1958 Consulting engineers, NTSB, & FAA notified of problem

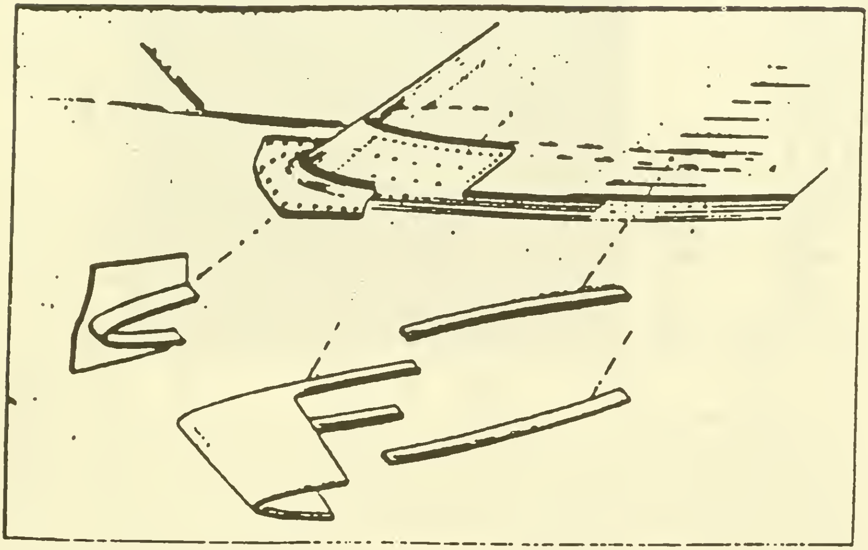
③ 1979 - Accidental death - Pilot Joseph Beyer ④ 6/84 - Accident of Pilot Crocker - ABS member. ABS approaches FAA for Certification Reevaluation

⑤ 2/85 - First (Beyer) trial, Ben Hogan, attorney - Jury deadlocked

⑥ 3/85 - DOT preliminary evaluation ⑦ 9/85 - Second (Beyer) trial, Ben Hogan, attorney, - First plaintiff award for V35 accident ⑧ 11/86 - Airworthiness Directory released, Pilots advised to slow down

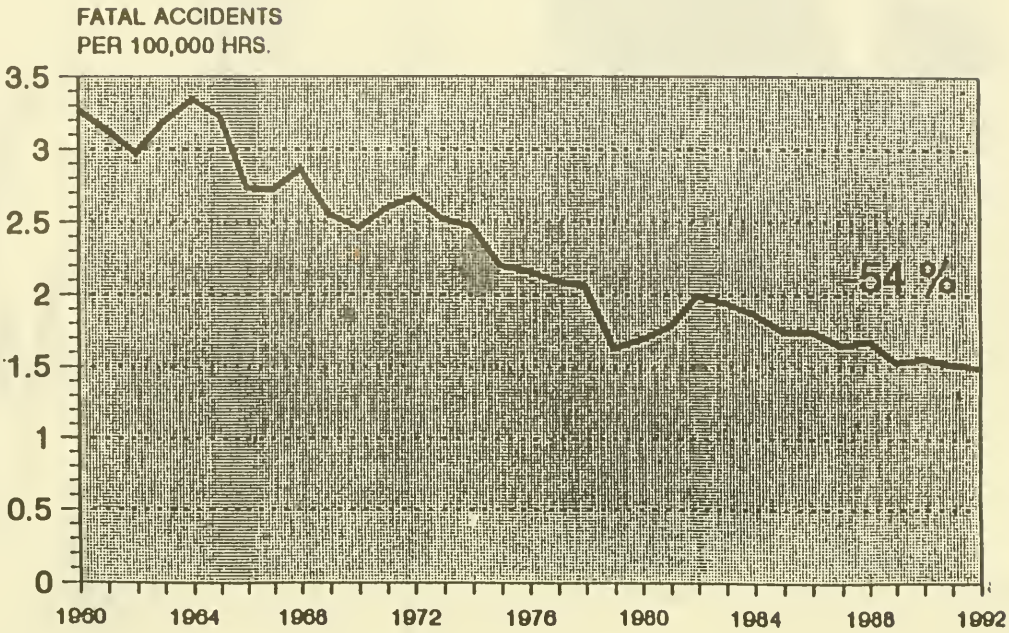
ENCLOSURE 3





ENCLOSURE 4

GENERAL AVIATION'S IMPROVING SAFETY RECORD



Source: NTSB

Mr. GLICKMAN [continuing.] All your statements will appear in the record. I am going to—the chairman has deputized me and I am going to recognize Mr. Fish first. I just have a couple of quick comments. I will ask my questions afterwards.

One, Mr. Creamer, you indicate the picture is not so bleak. Maybe not for Mr. Russ Meyer personally, but I guarantee you, for 9,000 machinists in Wichita, the picture is indeed very bleak. That is why you heard the very strong position by Mr. Goglia. The fact is they may be building a few expensive, higher-priced airplanes, and therefore the gross sales are up, which is the point both you and Mr. Hvass made. However, that does not indicate the fact that the work force has been dramatically affected downward, and you have heard Mr. Meyer pledge today that he would reopen the single-engine assembly line if this bill would pass, and employ up to 2,000 workers within a short period of time.

I want to make that point that I don't want you to be too cavalier that the picture is not so bleak. It is very bleak indeed for the people who work in these factories.

Mr. CREAMER. Congressman, we agree it is very bleak for the production of single-engine airplanes and piston-engine airplanes. We disagree that this bill will have a material effect in terms of promoting the substantial demand that is necessary, the big increase in demand that is necessary to move us from 547 units back up to 10,000 or 15,000 or whatever that would ensure the reemployment of these people. We have been sold a bill of goods that it will do that, and our view is it will not.

Mr. GLICKMAN. The only thing I can tell you is you have a commitment by the chairman of a public corporation, and those commitments do not come lightly under the Federal securities laws, that he will in fact open the lines and employ workers.

I suppose the proof is in the pudding. But you have a commitment from a public corporation chairman that will he do that.

It may be great that there is a tremendous used plane market. There is a tremendous used car market out there. I don't want to buy a 1958 Buick or Edsel if that is all that is available. Most people want to buy a new product that is more comfortable, faster, whatever it is.

There are a few examples of a few single-engine airplane manufacturers making airplanes. Most of them don't have long tails. But your argument is that we ought to be satisfied with that used market.

Mr. CREAMER. That is not our argument at all. Our argument is that there is nothing in this bill to change it. The pilot or the purchaser looks to the value relative to the usefulness of the product. This bill does nothing to change the relationship of usefulness of a new aircraft to a used aircraft relative to the price. It does absolutely nothing.

Even if it results in a 5-percent reduction in aircraft price—and remember, when you make a new airplane, the tail is not affected. When you make a new airplane, you are looking at what kind of liability you are going to be associated with, essentially the cost of the new unit.

As to Mr. Meyer's comment, with all due respect, it is hard for us to believe that this bill or that carrot is not being used as a way to get a substantial—and there is no doubt there will be a substantial financial benefit to Cessna, but is it directly tied to the economics of producing a new unit of single-engine airplane? The answer is categorically no.

Mr. GLICKMAN. Let's let Mr. Meyer answer that question. Then I will get to you, Mr. Hvass.

Mr. MEYER. Thank you. I am very pleased to respond.

It fascinates me, the role of a critic. I don't know how many airplanes any of these witnesses have certified or built or sold, how many employees they have ever hired in this industry. But they certainly know a lot about our industry.

I would say this. The used aircraft market is a fundamental part and an important part of our industry, whether we are making new airplanes, as you point out, or not. There will always be sales of more used aircraft than new aircraft because there are 135,000 airplanes in this country, they are actively traded like automobiles are actively traded. There are more used cars sold every year than there are new cars.

The comment about—by the way, used aircraft do not create jobs. New aircraft create jobs. And the comment that the kit sales in this country will somehow or other supplement and fill that need, kit sales, it is a wonderful hobby, they are smaller aircraft than we build, they are not passenger-carrying aircraft, they are built by a wonderful community of people who do their own craftsmanship and handwork in building those airplanes. And oh, by the way, the EAA, which is the second largest consumer organization in this country, is equally as supportive and enthusiastic about this bill as the AOPA.

Mr. GLICKMAN. Mr. Hvass, I didn't mean to neglect you. Did you want to comment on this?

Mr. HVASS. I have two comments, Representative Glickman. The first is that you won't go buy a 1956 Dodge or Plymouth, but if you go to the airport today and try to buy 1994 aviation safety, you are going to get an aircraft certified in 1956, 1957, early 1960's. You can't buy 1994 safety in an aircraft, but I can in a car.

If Cessna has not spent any money, zero dollars since 1986 on reserve on general aviation aircraft, pistons, I believe Mr. Meyer said, I believe what you will get is an aircraft that hasn't advanced since 1986.

Two experiments were tried to see if there was any potential for single-engine piston marketing. Beech reduced the cost on the Debonair, the straight-tail Bonanza, in 1983 or 1984, to get back to a price level. I think they sold 34 airplanes. Mooney did the same thing. They took the price of their 201 aircraft back to the 1979 price level. They sold 20, 30, 40 airplanes.

We know, as the figures show, the used market says we are not going to be selling new aircraft until there is a demand for them. In spite of Mr. Meyer's pledge, what we are going to have is 3 years of production, 2 years of production——

Mr. GLICKMAN. It is interesting that both AOPA and EAA, those who represent the kit-built plane manufacturers, are so strongly for this bill. The pilots, people who are using it. I don't necessarily disagree with the concept that there is an active market for used aircraft but under that theory, we would never invent anything in America. Nothing. I don't know.

Mr. CREAMER. It is not a question of inventing. There has not been substantial technological innovation in the piston aircraft sector in 25 years, since the end of World War II, except in avionics, which you can put into that old airplane.

Now, there has been in these other areas, and there is substantial demand. One day there will either be one of several things. Either these airplanes start to wear out, in which case we will see more demand for new aircraft, or——

Mr. GLICKMAN. If we have any pilots left, maybe you are right.

Mr. CREAMER. I agree with your concern about pilots, but the fact that there are fewer pilots has very little to do with the cost of product liability. We have got to focus on whether this bill will solve the problem as advertised. And there is not a shred of evidence that it will.

Mr. GLICKMAN. Let's see, Mr. Goglia.

Mr. GOGLIA. I sit here listening to these arguments. They appear to play well downtown. But out in the flight line where I live, the people that bring their airplanes in and have modifications done to them because they can't buy a new airplane, they tell us over and over and over, if there were a new product available, they would buy it. And I don't know where we are getting that; we are going to continually buy used equipment. If we have an upgraded new product available, they are going to buy it. They are telling us that day after day after day.

Mr. GLICKMAN. Mr. Boyer.

Mr. BOYER. Some of the manufacturers that are still in the piston fleet—and I will use the French manufacturer as an example—know that the average person buying a new piston airplane of the few available today is generally a new pilot with about under a hundred hours. That is just like you and I, would probably not think about buying a used car. They don't understand the process of going to the shop and having these avionics installed. They don't understand the process of fix-up. And they are interested newcomers to this, and they want the same thing they get in automobile transportation new. They just aren't out there.

The other elements are, remember, we had a big three, just like General Motors, just like Ford and Chrysler. The big three are not making piston aircraft today. When you begin to get 2,000 units on the line from a company that has a name that we used to see in the consumer magazines, the regular magazines, that is back in business, you promote people walking into an FBO to learn to fly.

The average person today, on the student staffs that are going down, is 38 years old. It is generally a male, it is generally somebody who has achieved some success in business, has found a way to pay for flight training, which by the way hasn't increased in the last 20 years, but if they walk in and say, "After I go through this challenge, I spend the $3,000 or $4,000, I do all this, can I buy a new airplane," and they are told no, what incentive is there for a person who thinks about the car market?

The other element about the accident issue, yes, the new technology has come in avionics, and avionics probably do a lot in that panel to help avoid the major cause of accidents, not product defects, but weather, and the kinds of avionics that can be put in the panel, built in the factory model from a new airplane or installed in a used, do allow a lot of weather avoidance in single-engine aircraft.

Mr. GLICKMAN. I know this is a tough issue. I know that there is economic self-interest on all sides of this issue. What I am trying to do in this bill is to strike a balance.

When you go to a museum in France and you sit in a chair and the chair would break and fall, you wouldn't sue the heirs of Louis the XIV. You might sue those who operated the museum. That is, we have made the decision practically that there ought to be some limit, a length of time that a product is out there when it is no longer reasonable to hold the manufacturer of the product liable, and that we would go after somebody else.

Sometimes this is done practically. The fact is the useful life of an automobile is reasonably short, so people trade it in. You see very few very old cars on the marketplace except those that are specially driven. Airplanes are built to defy the laws of gravity, but they are not built to last forever either.

The fact of the matter is, I have come to the conclusion that the liability tail is a factor to these companies building less expensive airplanes. I can't come here today and tell you absolutely it is going to create a renaissance in the industry. I don't know. One company says it may create a minor renaissance and we will see what happens after that.

But the question here is of balance. That is all. We want to preserve the rights of people to sue. This bill doesn't take away the rights of people to sue mechanics, fixed-base operators, or pilot. All we are saying is after a certain number of years, you can't sue the manufacturer anymore.

It just looks to me like in America unless we kind of at least explore these issues openly without blind adherence to the status quo, that we will end up not making very many products in this country any longer. They are all going to be made overseas.

We may argue over whether the number of years is right or not, but I am just telling you that this is an issue, I think, that requires us to take an honest, open, unfettered look at this issue. And, you know, obviously I have a personal stake in this. It comes from my district. You have a personal stake in this, Mr. Hvass. You handle plaintiffs' cases. You have a personal stake in this, Mr. Stearman. I understand you are an expert witness in these cases. Everybody has a personal case——

Mr. CREAMER. My personal stake is that I fly these airplanes.

Mr. GLICKMAN. Then you have a very good personal stake as well. I don't demean anybody's personal stake in this thing. We all come with our own—they build the airplanes and they fly them. He builds them. So everybody has a personal stake in this thing. We are trying to figure out as a matter of public policy what makes sense. And it is a question of balance and we are trying to work through that right now.

I do need to yield to Mr. Fish.

Mr. FISH. Thank you, Mr. Chairman.

I apologize to the panel. I was a little late in arriving at this morning's hearing. I understand my statement was made a part of the record. Had I been here to read it, you would have learned that I have been a cosponsor of Mr. Glickman's bill for four consecutive Congresses, and I would like you to know that before we start.

Mr. Meyer, I would like to explore the liability insurance situation for a company like yours for a moment. Three questions: one, is aviation product liability insurance difficult to obtain?

Two, do many insurance companies or underwriters offer liability coverage?

And finally, do you have dollar-for-dollar insurance coverage or do you have a deductible, and if so, what would be the size of the deductible?

Mr. MEYER. Product liability insurance is not terribly difficult to obtain. It is costly. There are two major insurance carriers in this country, Associated Aviation Underwriters and U.S. Aviation Insurance Group, that are the primary underwriters here, and then everyone that I know of, Boeing, Cessna, Beech, and any of the manufacturers, uses an excess carrier normally in Europe, normally in England.

At Cessna we have had both over the years. We have been covered first dollar and we have had deductibles. I will tell you what we have. We self-insure up to $30 million, so we are on the hook for the first $30 million. We have what is called an umbrella coverage up to $470 million over the 30. That is disaster coverage and so forth.

I think that is reasonably conventional in the industry. If you are going to acquire first dollar coverage, you pay about a $1.10 for a dollar's worth of coverage. That is why most companies choose to be basically self-insured.

Mr. FISH. In other words, your company pays out the first $30 million?

Mr. MEYER. Yes, sir. We have—depending on policy years, we have a per-incident limit that varies from $7 million to $10 million. Basically we are responsible for the first 30, and all of the costs of defending those lawsuits, yes, sir.

Mr. FISH. Are you in a position, Mr. Meyer, to share with us the premiums that your company pays for liability coverage?

Mr. MEYER. The way I like to answer that, I know what we pay for premiums. I think that is sort of competitive sensitive information. However, what I can tell you, and we are happy to disclose, is that on average, including the cost of defense, including all of the resources that we spend, and including the premiums that we pay for our insurance coverage, excess coverage, we spend about $20 million per year, and that has been about the number for the last 7 or 8 years.

Some years it has been higher, some years it has been a little bit lower than that.

Mr. FISH. Mr. Meyer, you touched on this issue, but I think it is worth visiting again. It is Mr. Creamer's testimony that the real reason that general aircraft manufacturers' sales have gone down over the last 10 years is because during the 1950's, 1960's and 1970's, the industry glutted the market with airplanes. In his words "the market matured and new sales collapsed." And I understand this to refer to the availability of used aircraft in great numbers. Mr. Creamer further argues that this phenomenon had nothing to do with product liability costs. And so I think the issue is framed here in so far as your testimony says it is primarily product liability.

I wonder what your position is being involved in marketing airplanes as you have been and being aware of trends in the market where you compete. How would you respond to Mr. Creamer's argument?

Mr. MEYER. Yes, sir. You missed my comments earlier, and I am very happy to repeat them. You have heard from a number of witnesses who will tell you why we did or did not do certain things at Cessna. Since I made that decision, I think I am the only one who can respond accurately to it.

I will assure you that while our industry has been cyclical over the years and we have been sensitive from time to time to various issues like luxury taxes, economic issues, the strength of the dollar, et cetera, the sole and only reason that we stopped our single-engine production lines in 1986—and I repeat that again, the sole reason I made that decision, the toughest decision I ever made—is because there was no way to calculate the cost of basically unlimited exposure to product liability for airplanes that were 40, 50, 55 years old. It is the only reason that we stopped production. And that is the only reason that we have continued to stop production for 8 years.

The comments that we overproduced are absurd. We built on average from 1965 to 1982 at Cessna, on average between 500 and 600 airplanes a month.

I was there during most of that time. Sometimes we had 800 or 900 airplanes, which was normal, on the field for delivery. But we never had thousands of unsold aircraft. They flowed through our system. We had a thousand dealers around the world. We had a finance company that was the ninth largest finance company in the United States. Business was great.

We stopped producing airplanes because of the product liability cost, period.

Mr. FISH. Thank you very much.

Mr. Boyer, I want to move on to another issue which was mentioned this morning, and that is the effect of the nonproduction of new planes on the training of new pilots.

As I heard this morning, presumably the advancing age of the piston engine aircraft now available for the training of new pilots has become an issue.

Could you share with us statistics regarding the number of new pilots' certificates that have been issued in recent years? Has there been a decline in the number of individuals seeking to learn to fly? If so, is there a relationship between the increasingly older aircraft and product liability that affects the number of new pilots?

Mr. BOYER. Let me set up, Congressman Fish, a sort of mental image of what the statistics show us as the average pilot, as I stated, the person going out who is interested in learning to fly. Thirty-eight years old, most FBO's will tell you it is somebody between 35 and 50 years old, probably driving at least a fairly new luxury car up to the airport. Somebody who has had back in their head because of an EAA program or one of our programs the idea of wanting to learn to fly, and now has the economic wherewithal and the time at that point in time in their vocation to spend 6 months or so to spend at this fairly challenging training opportunity that is overseen by the Federal Government.

They go into the FBO system, which, by the way, imagine a dealership selling only used cars, it is never as good as a dealership that used to be selling new planes, and these individuals then go out to look at the aircraft that they are going to train in.

The aircraft that we really need to replace in the fleet today and the kind of aircraft that Mr. Meyer has said he would begin building again are the two- to four-place fixed-gear single-engine piston airplanes. Those are the ones we are wearing out the fastest. They are the ones that have had the most training landings on them. They are the ones who sat outside during multiple uses.

The flight schools Mr. Meyer alluded to, the universities like Emory Riddle, the university in North Dakota that are buying French airplanes today, that is because the fleet that can't be replaced anymore in large numbers out of the used fleet are the training aircraft.

Now, this person goes out and maybe sees a dilapidated used aircraft that has got a good engine, that has got a good control system, that is legal to fly, and we are looking at aircraft like that, which has caused us to go from a training environment in which at one time we had 138,000 students a year to the figures I just cited for last year, 56,000 students. We have cut in half the number of people a year that are learning to fly.

Mr. GLICKMAN. We need to go vote. Everybody will have an opportunity to respond to the same questions. Then Mr. Scott is next. But we need to get this vote out of the way. We will be back in about 10 minutes.

[Recess.]

Mr. BROOKS [presiding]. The Chair recognizes the gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

Let me just preface my remarks and questions by saying that what has gone on with the aviation industry is similar to the thing that is going on in the maritime industry, which has devastated employment in my district. There are virtually no ocean-going vessels outside of Navy vessels being built in America today because of a number of factors.

To the extent we can get commercial shipbuilding back in America, it would have a very positive effect on employment in my area. The question I think before us is how this particular bill will affect the aviation industry, and I have a few questions.

I will ask Mr. Meyer first. You indicated $20 million a year is what you are paying for insurance and everything. If this bill would include all claims within the 15-year period, and most, as I understand it, of the claims occur in the first 17 years?

Mr. MEYER. Yes, sir.

Mr. SCOTT. And most of the problems are caused by pilot error, not by——

Mr. MEYER. Yes, sir.

Mr. SCOTT [continuing]. Manufacturers, how much of a reduction of that $20 million would be anticipated if this bill were to pass?

Mr. MEYER. I think something in the area of perhaps $5 million to $7 million.

Mr. SCOTT. Five million to $7 million?

Mr. MEYER. Yes, sir.

Mr. SCOTT. That is over——

Mr. MEYER. Even though the average age of the aircraft in the general aviation fleet today is about 26 or 27 years, the aircraft, as you would expect, tend to be used, the newer they are, the more they are flown, and of the litigation that we have on file today, about—I will give you an approximate number, 65 to 70 percent at least involves aircraft that are within 18 years of age, and another 25 to 30 percent is older, so 25 or 30 percent of $20 million is $5 million to $7 million.

Mr. SCOTT. Do pilots have insurance, generally?

Mr. MEYER. Generally they don't carry very much, unfortunately. We don't have a mandatory requirement that they be insured.

Mr. SCOTT. For a plane that has an accident, who has insurance?

Mr. MEYER. Well, we are either insured or self-insured. Normally a lawsuit is brought against the aircraft manufacturer, the engine manufacturer, the magneto manufacturer, perhaps another component. The fixed-base operator, perhaps the pilot, perhaps the mechanic.

There are usually multiple defendants. And in most cases some of the defendants have less insurance than others.

Mr. SCOTT. What percentage of the premiums actually go to paying claims?

Mr. MEYER. We have estimated less than 15 percent.

Mr. SCOTT. Fifteen?

Mr. MEYER. Yes, sir.

Mr. SCOTT. Percent?

Mr. MEYER. Yes, sir.

Mr. SCOTT. Of the premiums you pay——

Mr. MEYER. Of the total cost, of the total $20 million.

Mr. SCOTT. What happens to the other 85 percent?

Mr. MEYER. It is defense costs, the costs of litigation, discovery, trial, investigation, all the things that are associated with product liability litigation.

Mr. SCOTT. And adding all that up, what do you get to?

Mr. MEYER. Twenty million dollars.

Mr. SCOTT. That is the insurance.

Mr. MEYER. That number includes the figure for our excess insurance. So about $14 million to $15 million would be a good number for the cost of defending the lawsuits, not including the premiums for insurance, for excess coverage.

Mr. SCOTT. What are you self-insured up to?

Mr. MEYER. Up to $30 million.

Mr. SCOTT. Per what? Per year?

Mr. MEYER. Yes, sir.

Mr. SCOTT. Has your catastrophic insurance kicked in recently?

Mr. MEYER. Not in the last—we have stayed within that $30 million limit I think each of the last 6 years. We exceeded it I think in the years 1985 and 1986. I might be wrong on exactly those years. But we have stayed within the $30 million limits for the last several years.

Mr. SCOTT. And you pay the defense costs as part of the self-insured part?

Mr. MEYER. Yes, sir.

Mr. SCOTT. And that ran you $14 million to $15 million?

Mr. MEYER. Yes, sir.

Mr. SCOTT. And if this bill passed, you would have a $5 million to $7 million reduction?

Mr. MEYER. That might be a little bit high, but I would think that is probably in the ball park, yes.

Mr. SCOTT. Do you have any quotes for insurance for first dollar or a lower——

Mr. MEYER. Yes, sir. We insure on an annual basis, and each of the last several years we have gotten a variety of quotes, including first dollar coverage and then different levels of self-insurance. And the first dollar coverage is so expensive, as I mentioned I think earlier, for a dollar of coverage at the lower limit, it costs more than a dollar. That sounds strange but that is because there is some certainty that that first layer will be used.

So we look at the net present value of our premiums and whether or not we want first dollar coverage, and how the package is structured for each of the last 7 years. We have self-insured at a layer above that amount. We had a $50 million deductible back in 1986 and 1987. We have since reduced it to 30. It is currently 30.

Mr. SCOTT. You have indicated a shift in market share from domestic to foreign. Is there a difference in liability exposure between the domestic and foreign manufacturers?

Mr. MEYER. In general we have no product liability problem outside the United States because there are either statutes of repose in countries like Europe. Japan is about to pass one. But in terms of the litigation that we have today, although 30 to 35 percent of our aircraft are flown outside the United States, I think it would be accurate to say that less than 2 percent of our litigation is outside the United States.

And I would be very happy to provide that, that data to this committee.

Mr. SCOTT. If a business were to choose between a domestically manufactured plane and a foreign manufactured plane, is there a difference in liability exposure between the foreign plane and the domestic plane?

Mr. MEYER. In this country?

Mr. SCOTT. Right.

Mr. MEYER. No, sir. It is probably harder to sue a foreign manufacturer because they are either not here—they undoubtedly have to qualify to do business here, but they would be subject in general to the same laws in this country. I thought you asked me——

Mr. SCOTT. Why would there be a shift in market share as a result of the passage of this bill?

Mr. MEYER. The foreign manufacturers have a couple of advantages, if I understand your question correctly. One, they do not have the—unfortunately, we are very proud of building 180,000 airplanes. Most of the foreign manufacturers have built none. We are still carrying the substantial cost of all of those airplanes. The $20 million we have been talking about carries on because of aircraft which are still in the fleet.

Foreign manufacturers do not have what is called that tail, number one. And number two, in my judgment, it would be more difficult to sue a foreign manufacturer in this country than it would be a U.S. manufacturer. But they would be subject to the same laws.

Mr. SCOTT. So if this bill were to pass, the foreign manufacturers would pick up the same benefit as the domestic manufacturers?

Mr. MEYER. Yes, sir.

Mr. GLICKMAN. Will the gentleman yield for one second?

As I understand it, in the general aviation field, there are virtually no foreign-manufactured airplanes in this country, older airplanes; is that correct?

Mr. MEYER. That is correct.

Mr. GLICKMAN. So there is no old liability of airplanes of foreign companies. And the big cost for you is you have to insure tens of thousands of airplanes that were made 20, 30, 40, 50 years ago. They come in manufacturing new airplanes while still subject to the same liability laws on those airplanes, they have no tail at all.

Mr. MEYER. That is correct, sure.

Mr. SCOTT. How does that affect the new planes?

Mr. MEYER. I am sorry.

Mr. SCOTT. How does that affect the new airplanes?

Mr. MEYER. You mean from our standpoint or their standpoint?

Mr. SCOTT. Your standpoint. From a relative standpoint.

Mr. MEYER. From a relative standpoint, take the product liability for a moment outside the picture. We have been successful in this country over the years to compete very successfully with the foreign manufacturers. As I indicated earlier, up to 1986, U.S. manufacturers had in excess of 90 percent of the world's market in this industry. The only reason that we are not building aircraft today in this country, speaking for Cessna, is because of the inability to calculate the excess cost of product liability.

If this bill were passed, we would go back into production and we would enthusiastically accept the competitive challenge of competing with foreign manufacturers, and in any opinion, again, it would not take very long before we would once again be building in excess of 90 percent of the aircraft in the world of this industry.

Mr. SCOTT. Mr. Creamer, do you want to respond to that?

Mr. CREAMER. I would love to.

First, the liability tail of a manufacturer is irrelevant to his or her decision whether it is economic to build a new unit of aircraft. A foreign manufacturer who sells in the United States has exactly the same exposure by dint of his sale of a new unit of aircraft as Cessna would or as Beech does.

Remember, Beech still makes those airplanes. So does Piper. So does Mooney. So do many domestic manufacturers. The tail will be there whether they build a new unit or not.

Mr. Meyer is asking for a subsidy to his company to take them off the hook for those past liabilities. I understand that. I don't blame him for asking. But whether this Congress gives that should be premised upon whether or not it will increase the amount of output of domestic production.

Now, he said a minute ago, it would reduce the total—his savings, he would save $5 million to $7 million. In my testimony I said, gee, what if it reduced the total cost of the manufacture by 5 percent of gross sales. That is not 5 percent of gross sales. That is 5 percent of his current profit. That is a tiny amount of money relative to Cessna's gross revenues.

He is going to tell us that a reduction of his cost of $5 million to $7 million is going to result in a renaissance in the piston-powered industry? That is simply not credible.

Mr. SCOTT. When you sell the planes—I don't know if anybody can answer this—when you sell a plane, what do you advertise the useful life of the plane to be?

Mr. MEYER. To my knowledge we have never sold an airplane at Cessna that has a limited life.

Mr. SCOTT. An expected life.

Mr. MEYER. As I say, there are many airplanes we built that are 45, 50, 55 years old. It depends on how well they are maintained and how well they are flown.

Mr. SCOTT. If you want a 15-year statute of repose, would it not be reasonable to put a sign on a plane after 15 years to suggest that the manufacturer no longer stands behind the reliability of the plane?

Mr. MEYER. I am sorry, Congressman, could you repeat that?

Mr. SCOTT. If you want a 15-year statute of repose where you are no longer responsible, would it not be reasonable to advertise the fact for persons thinking about buying a plane, that this plane, the manufacturer no longer stands behind the reliability of the plane after 15 years?

Mr. MEYER. Let me answer that this way. I think that is a very important and a very good question. Regardless of the product liability laws, we are subject to very comprehensive Federal regulatory requirements for the life of the airplane. More important to me as a professional in the aviation industry is our commitment to support every aircraft that we have ever built.

And if you are flying in a 1939 Cessna 195 and you order a new part for that airplane, we will build it for you, whether or not that keeps the airplane in the air longer for product liability. That is a commitment we make to our customers. We won't build any new aircraft, but we will continue to do the job that we have done over the years in supporting our customers.

Mr. SCOTT. Anybody else want to respond to that?

Mr. STEARMAN. Congressman, Beech has gone on record in 1981 at a technical meeting suggesting they build their airframe for approximately a 10,000-hour life. That doesn't mean 10,000 hours from the date of purchase. That means actual life of the aircraft, the actual life cycle.

One of the problems with enclosure 1 of the bill is that it is based—that assessment as to what the useful life of the aircraft is not based on standard reliability techniques, mean time to failure wear-out. It is based on just date of purchase. There is a difference.

I think the time base needs to be different. I think the assessments are going to be different for every aircraft. You can't just draw a line. You have to do a true reliability assessment of the useful life of that product.

And it will vary from airframe to airframe. Beech estimates 10,000 hours.

Mr. SCOTT. Are you suggesting that the number—you are talking about flight hours?

Mr. STEARMAN. Yes, that will vary.

Mr. SCOTT. And a more reasonable standard would be flight hours and not years?

Mr. STEARMAN. Statistically it is more difficult to forecast, but yes, that is what I am saying. But it can be done and that is a more definitive base upon which to try to evaluate a product and what the useful life of that product is.

Mr. BOYER. Congressman Scott, one thing from a pilot's perspective that is difficult on these piston planes that were built so ruggedly and we never thought would last as long as they have, the one thing we have to keep in mind is where and how they operate.

You saw some statistics down here of a V-tailed Bonanza. The accidents that occurred primarily in that plane were penetrating turbulent weather, which caused some of those failures. Operated in various climates in which they were not put into those weather stresses, those planes unmodified would still be flying in many cases today.

Also, in areas of high corrosion, an airplane will have less of a useful life. We found some deficiencies by airplanes operating at low level during a power line patrol, put through a low level wind factor. So it is not a finite number.

Mr. STEARMAN. Yes, I certainly agree it is different aircraft to aircraft, but there is another factor with the V-tail in encountering turbulence, which has not been brought up. That is, a certain dynamic stall phenomenon, that gets set up with the tail when the aircraft Dutch rolls. This involves stability and control features. That Dutch roll puts unusually high loads in the tail. That is another reason turbulence induced trouble sets in.

This is another design defect in the product. It is easier to dynamically stall a V-tail than it is a conventional tail aircraft. You have unusually light loads coming in because of the stalling signature of the tail. It doesn't happen in the inverted T-tail of, a sister aircraft identical except for the tail. That is another design defect.

Mr. SCOTT. I would hope that just turbulence which would be expected, you would expect to run into turbulence, that—I mean, if you ran into a hurricane or something like that, that wouldn't be what you would expect to be flying through. When you take off a flight and run into some rain or some normal level of wind, that would be anticipated.

Let me ask one other question. You can kind of estimate a demand for new planes, I would imagine, and we have heard the suggestion that there are enough used planes out there to soak up most of the demand. If the price went down 3 or 4 or 5 percent, what would be the anticipated demand for new aircraft?

I guess just generally you can respond to whatever question you want on this, just addressing the demand question. If the demand is not out there, what difference would 2 or 3 percent price for new plane, what difference would that make?

Mr. MEYER. I am glad you have asked that question too, because we are in the business of manufacturing and marketing general aviation airplanes. We have been in it longer than anybody else. We had the highest market share of anybody. And I like to think that our people have the capability of evaluating the market substantially better than anybody else who is here this morning who purports to know what our decisions are about and why we do certain things.

We have had a group of people actively working this issue in the hope that this legislation will be passed. We have carefully evaluated the market. We have talked with our ex-dealers. We have talked with many of Mr. Boyer's members.

We sold an average of 5,000 airplanes a year for almost 20 years. We understand that market. We have committed to go back into the production of single-engine aircraft, and I will tell you this morning, the three models that we would build are the 172, the 182, and the 206.

We believe, in our judgment, with our background, and our research, and our expertise, that a minimum demand, a minimum continuing demand for those products is 2,000 aircraft a year. That is barely 30 percent of what we built for 25 to 30 years.

We are very comfortable with those numbers. We think we will probably build more than that. The market is clearly there for new aircraft.

New aircraft, by the way, will be better than the airplanes we build in 1986, 1985.

Mr. SCOTT. Will a $5 million to $7 million subsidy or change in your bottom line that this bill will produce, would it make that much difference so that you could all of a sudden sell 2,000 that you couldn't sell without that 5,000 difference?

Mr. MEYER. Congressman, we need this bill not so much to cut off what in our view is an unreasonable tail of exposure. The primary reason we need this bill is to be able to actuarially calculate in some reasonable manner the cost of product liability for the new aircraft that we are going to build today.

If we don't get this legislation, it is all academic. We are not going to go back into the production of single-engine aircraft. We will stay building business jets and build turbine aircraft where that is not a factor.

We need this bill because we need a specific——

Mr. SCOTT. Why isn't it a factor with our airplanes?

Mr. MEYER. It is not a factor because the business jets are professionally flown and there are no accidents. If there are no accidents, there are no lawsuits.

Mr. HVASS. Representative Scott, if I could, we just heard they need an actuarial basis for the claims they get. They are putting back into production aircraft they have a long history on.

We know what the 172 accident record is. We know what the 182 accident record is. We know what the 206 record is. They don't need that information to be able to forecast the number of crashes those aircraft are going to have. They may not know what the costs of liability are as far as jury verdicts, but nothing in this bill is going to give them that information either.

You have also increased the value of the company because you have managed to cut off that outstanding liability that is still sitting there for the aircraft that were built more than 15 or 18 years ago. That is the other thing that hasn't been brought out.

There is a sudden windfall to the company because the liability item they are now carrying on their balance sheet is now gone. So they are going to save the $7 million and that other money is there. But that doesn't benefit the people hurt in the accidents. That goes to the shareholders of Raytheon or General Dynamics. It doesn't help the people getting hurt by these airplanes one bit.

Mr. CREAMER. If I am not mistaken, Mr. Meyer said he was going to sell 2,000 units of these airplanes per year, I assume, at a price of about $140,000 new. So he is going to gross $280 million. He is going to tell us that a $5 million to $7 million reduction in product liability cost is going to determine whether or not he makes these 2,000 airplanes?

I respectfully submit to you he is trying to get the Congress to give him a subsidy, and I don't blame him, but it is not going to make the difference.

Mr. MEYER. I really resent that. I have said three times this morning that the so-called windfall of cutting off the tail has nothing to do with our decision to build single-engine aircraft. And I will say it one more time. What is described as a windfall is not a factor in our decision to build new aircraft.

We need a cutoff so that we can calculate the approximate cost of product liability. We were sued in January of this year for an accident involving a 47-year-old Cessna 140, an aircraft that was built in 1946 and sold for $3,000. It ran out of gas in Pennsylvania and we were sued for breach of warrant for a 47-year-old airplane.

They will recover nothing in that case, in my view. But we will spend $300,000 or $400,000 paying for the discovery and the depositions and all of the things that are involved in litigation.

We have to have a cutoff in 15 or 18 years or we are not going to build single-engine aircraft again. I am tired of hearing about a windfall we are going to receive for cutting off a tail for building 190,000 good airplanes.

Mr. BROOKS. Would you want to make it prospective so you can figure out what it is? Would you have the ability to make the liability prospective and not eliminate the current liability you have on probably 80 percent of your airplanes?

Mr. MEYER. No, sir, I sure would not.

Mr. BROOKS. Why not?

Mr. MEYER. Because we think it is reasonable to cut off that tail at a particular time at whatever savings we have.

Mr. BROOKS. Retroactively? You would be willing to do that?

Mr. MEYER. Willing to do what?

Mr. BROOKS. Retroactively go back and change it. You want to go back and change what the liability is, right?

Mr. MEYER. We want a statute of repose as spelled out in both the Senate and House bills——

Mr. BROOKS. Eliminate the liability that you now have. That is——

Mr. MEYER. That is correct.

Mr. BROOKS. That is what you want to do.

Mr. MEYER. Yes, sir.

Mr. BROOKS. You say you won't build airplanes unless you have some actuarial justification for new construction?

Mr. MEYER. That is correct.

Mr. BROOKS. Why wouldn't you make that prospective and let it go at that? Say you wanted 15 years' liability on prospective building. Then you would know exactly what it was. But I don't know how much money you save by evaluating that liability. It looks to me if you have $160 million to spend on 80 percent of the airplanes in U.S. general aviation fleet that are 15 years old, or older, that means that 80 percent of them are older. I assume yours might be in the same category. Maybe it is higher, maybe it is a little lower. Say it is 80.

Eighty percent of the 160 you paid out in 8 years would save you $128 million, which I don't think would be bad. You would like that. But I think this is designed to eliminate the possibility of that liability. When you spend $20 million a year on your insurance and your costs and or claims, if 80 percent of it is on older airplanes and you eliminate that, that is another $16 million net you keep for your company, whether you build anything or not. So I think you have to look at the whole picture.

We will continue this. We will go back to vote and come back. I know you all traveled to get here. It won't hurt you if you don't eat lunch for a while. It might even help. Mr. Fish has a couple of questions and I have a few when we come back. We will recess for the vote.

[Recess.]

Mr. BROOKS. The committee will come to order.

The Chair recognizes the gentleman from New York.

Mr. FISH. Thank you very much, Mr. Chairman.

Mr. Goglia, we have heard today about the devastating impact product liability has had on the industry. We have also heard positive projections for new jobs should this bill before us be enacted.

Now I ask you, as a labor leader, are there other unions that have been affected by the experience in the industry over the last several years, and are there other labor unions which are inclined to support this legislation?

Mr. GOGLIA. Yes, sir, there have been and continue to be other labor organizations who support this legislation, the largest of which is the Air Line Pilots Association, who are major users of the system. We also have certain elements of the United Auto Workers who represent members of the engine manufacturing facilities. And there are others. However, there has only been one international organization, labor organization that has been willing to stand up and be counted on this issue, and that is the International Association of Machinists.

Mr. FISH. Now, it seems to me that the question before us is the reasonable limit to a liability tail. In this legislation, that would be accomplished through a statute of repose. It is a type of statute of limitation, a matter that this committee deals with all the time. It is not a new concept. It is not a new responsibility. It is simply a matter of a balancing of the policy questions before us.

It seems to me that you, Mr. Goglia, have also addressed this issue in that way. You also said that the legislation before this subcommittee is not primarily about tort reform, it is about jobs. But your organization, representing half a million workers, would not be endorsing legislation if it considered the legislation to be procedurally unfair to potential tort victims. Can you explain to us some of the considerations regarding this legislation which were balanced by the IAM before they voted to support the legislation?

Mr. GOGLIA. Yes, sir. Most notably is in the 15-year statute of repose, that rolls. So although the manufacturer would be relieved of his responsibility after 15 years, everyone who worked upon that airplane in the 15 years would still be on the hook. And let's not forget that in our system, those airplanes would have received 15 annual inspections. They would certainly have had at least one engine replaced, unless the airplane was locked in a museum someplace. It would certainly have had their avionics packages upgraded by my members and my fellow mechanics.

About the only thing that would remain the same in that airplane at the end of 15 or 18 years would be the fuselage. And since these airplanes are not pressure airplanes, these fuselages last a long time. In fact, it is a tribute to our manufacturing skill and the design standards the FAA has imposed on this industry, that these airplanes are around as long as they are.

I can think of no other product that gets the use and abuse that airplanes get, yet remain a viable product for so long. And it is unfair to the manufacturer to hold them responsible for this product when so many other people have worked on it, disassembled it, reassembled it, modified it over the years, and yet we still keep that first person on the hook.

Mr. FISH. I thank you. That is a very clear statement.

Mr. Chairman, I just have one issue to go over with Mr. Meyer.

The chairman has raised the issue of retroactivity. I would like to clarify what would occur if S. 1458 becomes law.

Now, Mr. Meyer, wouldn't Cessna remain liable under that statute for any accident that occurs involving an airplane delivered 18 years ago or 17 years ago or any time up to the present?

And if so, the real retroactivity is with respect to your liability, isn't it?

Mr. MEYER. Let me try and answer your question. If the bill were passed today, let's say it was 18 years today.

Mr. FISH. Under the Senate bill.

Mr. MEYER. We would be responsible, we would continue to be responsible looking forward for accidents involving aircraft that were 18 years old or less. We would not be responsible in the future for accidents involving aircraft that are over 18 years old as the statute currently reads.

Now, the statute does not change any rights with respect to negligent operation of the aircraft. It changes no rights if there is concealment of any defects. It changes no rights for people who are on the ground. It does two things for us in the industry that are an important part of the package.

Number one, it does indeed cut off the tail and the unlimited costs that go on forever for aircraft that have already been built. It is an important part of our package. And second, it enables us to have at least a reasonable, accurate idea of the cost of a new aircraft we build today.

Mr. FISH. I thank you for that, because that is exactly the balancing issue that this committee faces. Thank you very much.

Mr. BROOKS. You are quite welcome, Mr. Fish.

To the panel, I would like to ask one question. One of the complaints we have heard is that the manufacturer may be forced—may have been and may be in the future—forced to bear a disproportionate share of general aviation liability, because the negligent party such as a pilot or mechanic often has no insurance. What is your reaction generally to proposals that might mandate that pilots and mechanics carry liability insurance?

What do you think, Mr. Stearman?

Mr. STEARMAN. I think the chief counsel of Piper first recommended this. I think that the pilot, as in the case of the driver of a car when he gets his license, he must prove liability insurance is available, and I think that is fair. I think that pilots should also carry a liability insurance, and I always do when I fly.

But I understand that that is not required, which I think is out of conformity with the automotive industry. I think liability coverage by the pilot, liability coverage by the modifier, the modifying shops, would be in order.

Mr. BROOKS. Do you have any comment on that, Mr. Creamer?

Mr. CREAMER. We would have no objection to that.

Mr. BROOKS. Mr. Hvass.

Mr. HVASS. If I might, Mr. Chairman, a couple of comments on that. When we tried to get exactly that legislation through in Minnesota, the entire aviation trades industry rose up against us. We were able to get through a $25,000 mandatory minimum, which is less than our car insurance.

We have looked at insurance policies that are advertised as 1 million dollars' worth of coverage, but when the crash occurs we find out there is only $100,000 per seat coverage, so the person that thought they bought a million got $100,000.

We have had case after case when we bought coverage and discovered after the crash that their spouses were excluded.

We would love to have some type of mandatory insurance that got rid of the loopholes that the insurance industry has put into their policies and also get rid of the opposition of the general aviation trades groups for mandatory insurance for pilots and mechanics.

Mr. GOGLIA. I think mandatory insurance is a very good idea for all people. If you are out as a mechanic, if I am out selling my services to somebody, I am liable for my work and I should be held accountable for it.

Mr. BOYER. I will be the dissenting opinion here with a couple of qualifications. As the people who have to pay the bill for insurance, annual inspection, all the other things to do with the airplane, the majority of our members, and I must characterize the entire pilot population that own airplanes, carry insurance. There are varying amounts——

Mr. BROOKS. Most of them?

Mr. BOYER. Much more than half.

Mr. BROOKS. Most of them wouldn't object, then.

Mr. BOYER. We do object to another regulation on an already highly regulated industry that requires us to add more cost to the ownership of an airplane.

Let's talk about the kind of person that may not carry insurance. They may own an aircraft that does not even have an electrical system. They may only fly within 25 miles of their home base, only on sunny days. They say to themselves, I will self-insure. We have to be cognizant of that kind of individual, the same kind of thing as somebody who operates a vehicle on a large farm.

Mr. BROOKS. They don't operate that airplane on a large farm, do they?

Mr. BOYER. Some of them do and go not much further than the area they may have a herd of cattle on, et cetera, in areas like Montana.

Mr. BROOKS. Mr. Meyer.

Mr. MEYER. We would be in favor of everyone carrying insurance. I am not quite sure how you would legislate that, but I think it is a benefit to everyone if everyone involved in the system is insured.

Mr. STEARMAN. Mr. Brooks, I would like to add to that list the fixed-base operator. The accident I was involved with came about because of about a 20-percent misrepresentation in runway length as it was printed on the air maps due to the falsification by the fixed-base operator. I think they also should be required to carry liability, the fixed-base operator.

Mr. BROOKS. I understand. Interesting.

Mr. Meyer, why wouldn't you want to make this prospective so that if you want to build new airplanes you can build them and know that you will have 15, 18 years' liability potentially if you mess up on them?

Mr. MEYER. As I said, Mr. Chairman, this statute of repose is a very important package for our industry.

Mr. BROOKS. A package?

Mr. MEYER. Yes, sir. It is a package that does two things. We have got to get out from under the current unlimited exposure for product liability. We have got to get out from under the tail that we are currently covering and the costs that are inherent in that tail.

Mr. BROOKS. Did you say that that cost to you was roughly $5 million or $7 million a year?

Mr. MEYER. Yes, I think that is——

Mr. BROOKS. Did you say that 80 percent of the claims were in the first 7 years? What percentage of claims are in the first 7 years or the first 15 years?

Mr. MEYER. I didn't respond to that question. I think that is probably about right. What I said was that about 65 percent, and as I also said, we would be happy to provide that in detail.

Mr. BROOKS. I understand. Sixty-five percent occur in the first 7 years or first 15?

Mr. MEYER. Of the lawsuits currently against us involve aircraft that are 18 years or newer.

Mr. BROOKS. Sixty-five percent. So you want to eliminate the 35-percent tail.

Mr. MEYER. Yes, sir.

Mr. BROOKS. And that would be worth what, $5 million or $7 million to you?

Mr. MEYER. Yes, I think that is——

Mr. BROOKS. Ballpark, you have to check that?

Mr. MEYER. I think that is probably fairly accurate.

Mr. BROOKS. Isn't that just a direct subsidy?

Mr. MEYER. No, sir. Those are funds we need—it is a major financial commitment to go back——

Mr. BROOKS. A liability that you have.

Mr. MEYER. Major. And the combination of using the funds that we would save by eliminating the tail, combined with our ability to make some reasonable estimate for the ongoing cost, those are essential parts in our business determination to go back into the production of single-engine aircraft. Without those two things, we cannot as businessmen justify doing that.

Mr. BROOKS. If you don't get the $5 million, $6 million, $7 million, or $8 million subsidy, which is what it is, you are not going to start building new airplanes.

Mr. MEYER. That is correct.

Mr. BROOKS. How about the other people who are building them now in this country? Who builds them now?

Mr. MEYER. There is almost no one building——

Mr. BROOKS. They build about 500 now?

Mr. MEYER. We built 555 in 1993 compared with almost 18,000 in 1978, 1979. And the number will be less in 1994. The first quarter—I think the lowest quarter since World War II.

Mr. BROOKS. In your opinion, gentlemen, all of you, what is the likelihood that a defect in the manufacture or design of an aircraft will always manifest itself within 15 or 18 years?

Mr. GOGLIA. Mr. Brooks, I would like to respond to that.

Mr. BROOKS. You said it was 65 percent of claims. But I am talking about what percentage of defects would show up.

Mr. GOGLIA. In some of the research that we did in conjunction with GAMA, we came up with 20,000 plus accidents. In 99.93 percent, manufacturing defects had showed up prior to 18 years; 0.07 percent showed up after 18 years.

Mr. BROOKS. Of technical defects?

Mr. GOGLIA. Manufacturing defects, nuts and bolts defects. When you look at the whole package, that is an insignificant number.

Mr. BROOKS. Mr. Stearman.

Mr. STEARMAN. I think there is an added flip to that. The question is, as indicated in the V-tail Bonanza, you can identify these often early. The real question is, what is the time to get those implemented. And it is about—I know of several cases where that is probably twice the requested statute of repose time.

I think the real question is, can you identify——

Mr. BROOKS. You need that time to allocate and determine those defects and rectify them?

Mr. STEARMAN. Yes. Why should it take 30 years to rectify a defect? It is way out of the recommended statute of repose time.

Mr. BROOKS. We would find out about it, perhaps in that 15 or 18 years.

Mr. STEARMAN. We hope we would. It depends on if——

Mr. BROOKS. And then it would take another 15 years to get the part?

Mr. STEARMAN. Oftentimes the litigation process brings out the defect. Maybe to the company it is latent and they are not aware of it, the engineers.

The plus of the litigation process is you pull together experts from all sides, and they look intently at this problem. They do actually some of the work of the NTSB, of the company, and by pooling resources, you get a wide perspective and often identify defects that have not been identified by NTSB or the company.

Mr. BROOKS. Any other comment on that?

Mr. Hvass.

Mr. HVASS. Mr. Chairman, the question I would have is, what does it mean to recognize the defect? I showed you the tape of the Cessna 411. There has never been any acknowledgment of the problems with the 411. With the V-tail Bonanza, there were 30 years that went by from the time the FAA began writing about the tail problems until things were finally manifested. There were problems with Cessna seats.

It wasn't until a substantial punitive damages verdict that we finally got Cessna to recognize those defects.

The question is when the FAA and manufacturer recognize them even though other people in the marketplace have.

Mr. BROOKS. Well, gentlemen——

Mr. GLICKMAN. Mr. Chairman, may I just——

Mr. BROOKS. You have one more question.

Mr. GLICKMAN. OK. I want to get back to this point and ask Mr. Goglia, the issue comes up of subsidy, and retroactivity. I suppose you could characterize it any way you want to, but representing the half million machinists, do you look at this bill as a subsidy to Cessna Aircraft, some big corporate greedy subsidy as perhaps some of the opponents would think? How do you view this bill?

Mr. GOGLIA. I view this bill as providing the manufacturer with a defined term of his liability, one that takes into account all the other people who worked on that product during, in this case, 18 years of its life, the first 18 years.

It is not a subsidy. The moneys Mr. Meyer mentioned that he spends, about $20 million, on insurance, I would venture to guess if he were building single-engine airplanes today, that number would not be $20 million, but it would be substantially higher. In the cost per airplane, that difference between $20 million and whatever the number is, would make the cost of ownership of a new airplane prohibitive.

Mr. GLICKMAN. Do you look at it as a subsidy to your employees? Maybe this "subsidy" might employ thousands of people. Is that possible?

Mr. GOGLIA. I think the number may be hundreds of thousands of people. I view this legislation as limiting the subsidy to the people that are sitting in this room on my left and people like them.

Mr. GLICKMAN. Do you mean lawyers?

Mr. GOGLIA. I mean the attorneys who get 40 percent of those numbers. My members get very ticked—I just represent them—

that there is a drain on this industry. The dollars and the resources that come into it are being siphoned off from us to people who only earn a living off the victims.

Mr. GLICKMAN. I guess my point is, going back, this whole thing is a balancing effort. We are trying to figure out what is the appropriate thing. If you look at this in a purist way, American society will end up with nothing but this radical conflict of right and wrong and nobody is in between.

This is not that kind of an issue. We are trying to figure out how best to protect the victims and at the same time how to employ people in America. That is what we are trying to put together. Nobody can play God in this thing.

I would say to my friends on this side, I suspect that if anything it looks like I am looking at people who know that they are right and there is no other way of doing business. Perhaps people on the business side look at it only from a bottom line, although I don't agree with that. I can see sometimes where that comes out in public.

That is not what we are trying to do here. We are trying to build a strong, industrial America that also protects people from injuries as well. And you can't go one way down the road or the other way down the road. It won't work like that in the world, the modern world anymore. We have to use the rule of reason.

I am telling you, if you don't use the rule of reason on this issue, issues that people care about on other things coming down, using courts as a means of resolving conflicts, will be far more prejudiced than they will on this particular issue. So I hope we can work something out.

Mr. GOGLIA. We view this legislation as being a compromise. It compromises all the issues. Eighteen years is a long time to be responsible for something. And it is solely a compromise to keep an industry viable.

Mr. BROOKS. Thank you very much, Mr. Glickman.

Mr. GOGLIA. If Congress in their wisdom were to give the industry that relief and it is found to be improper, Congress can take it away again.

Mr. BROOKS. Congress hasn't given it to you yet.

But I do want to thank you, Mr. Glickman, for your efforts, your understanding. Sometimes the proponents and opponents, neither one can write a bill that would be viable or useful or reasonable. Sometimes you have to work out an agreement between them, and the agreement they work out and present is not always what we consider a workable compromise, old buddy. We haven't looked at it yet. We haven't looked at both sides.

I want to thank all of you for your useful and informative testimony. Clearly, there are a number of differing explanations of the crises facing the general aviation industry, as well as proposed solutions. Very shortly, I will be announcing further actions the subcommittee and the full committee will take regarding this legislation.

The subcommittee is adjourned. Thank you very much.

[Whereupon, at 1:05 p.m., the subcommittee adjourned.]

APPENDIXES

APPENDIX 1.—WITNESS RESPONSES TO ADDITIONAL QUESTIONS FOR THE HEARING RECORD

pa Public Action

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August 9, 1994

Subcommittee on Economic and Commercial Law
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RE: Questions for the record submitted for response in connection with Subcommittee hearing on May 12, 1994--H.R. 3087, "General Aviation Revitalization Act of 1993"

Question 1

In my testimony I argued that the reason for the decline of production in piston single aircraft has nothing whatsoever to do with product liability cost.

I completely agree that the availability of good single engine aircraft is an extremely important aspect of the general aviation industry. As a pilot I am most eager to fly high caliber, well-maintained single engine aircraft.

The point I've made in my testimony is not that these issues are not important. Instead, I have argued that the bill in question will have nothing whatsoever to do with the production of new single engine aircraft. The reason is very simple. The decline in the production of single engine aircraft has occurred because demand has substantially diminished. The market place is saturated with single engine aircraft that can be purchased for substantially less than new single engine airplanes.

The only major innovation in single engine aircraft in the last 25 years has been in the area of avionics. As I pointed out in my testimony, avionics can be traded in and out of aircraft so that used aircraft can be as efficient as new aircraft from the point of view of these new developments.

In his testimony before the committee, Mr. Meyer of Cessna testified that this bill will save his firm from 5 to 7 million dollars in costs per year. He further testified that if this bill is passed he will be in production of single engine aircraft once again which he estimated would total almost 2,000 units per year. Based upon current industry prices this would yield a gross revenue of almost $280 millon for Cessna. It would be hard for anyone to believe that a savings of 5 to 7 millon dollars in overall product liability costs would in any way effect his decision to manufacture aircraft which would gross $280 millon.

If it were true that product liability costs were the principal cause of the decline for production of single engine aircraft that would presumably occur because it had driven the price of single engine aircraft out of the reach of ordinary pilots. But Mr. Meyer himself has testified that this bill would save from only 5 to 7 millon dollars of total costs. If that cost savings were spread directly to new pilots in the form of lower prices, it would result in only a several percentage point decrease in the product cost. Certainly this would not be adequate to generate the increased demand which the proponents of this legislation argue would result.

Question 2

The Republican members have asked whether I dispute Mr. Meyer's statement that the sole reason his company quit making piston engine aircraft was product liability. I do indeed dispute that claim. Mr. Meyer can say whatever he likes. But the economics that flow directly from his own testimony dispute that claim.

Question 3

I am the director of the Chicago-based division of Citizen Action. I do not believe that Citizen Action has any member of the trial bar on its national policy making board which has taken the position on this issue. The Illinois division of Citizen Action, Illinois Public Action, has 111 members. Of those, 10 or so are members of the trial bar. A number of these individuals also serve on the Illinois Public Action Fund Board which is our financial arm.

Our Board also includes a large representation from organized labor, representatives from the largest senior citizens organizations in the state, representatives of farm organizations, women's organizations, community organizations, consumer organizations, political organizations and minority organizations from throughout Illinois. We are pleased to work closely with members of the trial bar who represent the interest of victims who are injured through corporate neglience.

But any attempt to argue that our positions our taken as a result of trial bar influence is absolutely outrageous. We have sought out allies in the trial bar who agree with our positions and who can help us understand the positions of victims and who can help us financially. The positions which we take are shared by every major consumer organization in the United States, all of the organizations which represent the interest of consumers on a regular basis share our point of view.

And those positions are taken on behalf of hundreds of thousands of individual members of our organization, members who have no vested interest whatsoever in the outcome of any individual dispute but who wish to have a civil justice system that fully compensates victims of injury and that sends the economic signals to decision makers in large corporations which are appropriate to assure that safety is put first.

If you have any further questions, please let us know.

Sincerely,

Robert B. Creamer/rcd

Robert Creamer
Executive Director, Illinois Public Action

Questions for the Record

Submitted on behalf of the Republican Members

Subcommittee on Economic and Commercial Law

Questions for John Goglia, Member, International Association of Machinists (IAM), Aerospace Workers

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QUESTION

Mr. Goglia, why is the International Association of Machinists (IAM) in favor of this legislation when they have opposed similar legislation in the past and have consistently opposed overall product liability reform?

RESPONSE

As I stated in my testimony before the Subcommittee in May, 1994, while the IAM remains steadfast in its opposition to general tort and product liability reform, the IAM supports the General Aviation Revitalization Act because it will result in the creation of high-skilled, good paying jobs in an industry that has been virtually decimated. The IAM also supports the bill because it is very narrowly drafted for the unique nature of the General Aviation industry.

Questions for the Record

Submitted on behalf of the Republican Members

Subcommittee on Economic and Commercial Law

Questions for Charles Hvass, Jr., Hvass, Weisman & King, Minneapolis, Minnesota

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Mr. Hvass, in responding to his questions would first of all like to note that he has been in trial and may be supplementing these answers at a later date.

(1) You argue in your testimony that there are too many aircraft and too few pilots, and state that due to reasons unrelated to product liability, the pilot-to-aircraft ratio has gone from seven pilots per aircraft to approximately three and a half pilots per aircraft. But isn't there a relationship between the number of new aircraft constructed for training purposes and the number of student pilots and, thus, the relationship between the number of new pilots and the pilot to aircraft ration?

Answer:

No. There is no relationship that can be found on the basis set forth in the question. What is apparent from the numbers of pilots compared to the number of planes is that the pilot population base, as noted by many authors, has expanded due, primarily, to the availability of veterans' training benefits. We see large bulges in the pilot population during times that G.I.'s are re-entering the work force and making use of their V.A. training benefits, particularly post-World War II, post-Korea, and post-Viet Nam. The termination of V.A. benefits, and the dwindling number of those coming out of the military and making use of them, has resulted in the decline in the pilot population. The relationship to aircraft comes in that when there are too many airplanes produced, the price of used aircraft sinks dramatically thereby impeding the ability of the manufacturers to sell new aircraft. As the pilot population steadied in the late '70s and early '80s the manufacturers continued to produce large numbers of aircraft. The result was a shift in the ratios between new aircraft and the pilot population.

Further, the Committee should note that the industry, as a whole, has quit many programs that were used to entice people to begin flying. There used to be coupons in magazines, first at $5, then at $10, giving people their first pilot lesson. Those programs were stopped as the manufacturers decided to get out of piston engine production.

(2) You argue in your testimony that the domestic general aviation industry is not on the verge of collapse when its two largest manufacturers, Beech and Cessna, are experiencing record profits. But isn't it a fact that the profit margins enjoyed by those companies are due to their jet aircraft sales?

Answer:

Preliminarily, in my answer to question numbers 2 and 3, I would note the answer to question number 4. The general aviation industry is not on the verge of collapse because of a number of items. The industry is selling jet aircraft, where their margins are high, and these companies, by devoting their research dollars to jet aircraft, have helped open that market up while ignoring the general aviation piston engine market.

By taking the figures solely from the General Aviation Manufacturers Association, you ignore, in asking this question, the huge expansion of both the ultra-light, and kit-built aircraft field. Piston aircraft are being built, they're just not being built by the limited number of manufacturers that form up the GAMA lobbying group.

(3) As you are aware, Cessna has not manufactured piston-engined aircraft since 1986 due solely, according to its chairman, to product liability. And is it really useful to focus on jet aircraft revenues when the legislation before us is intended to help save the general aviation piston aircraft industry?

Answer:

I know what the chairman of Cessna has said concerning his decision to not make piston-engined aircraft. If this legislation was intended to help save the general aviation piston aircraft industry, then why are jet aircraft included in the legislation?

(4) You argue in your testimony that one reason for slow sales of piston aircraft is that manufacturers continue to use the same old technology that has been around since the '50s and has done little to advance the art of light aircraft design. However, what choice does an industry have when, for example, Cessna, which between 1965 and 1982 invested between $20 to $25 million in research and development, but was forced between 1986 and 1993 to spend that same amount or more per year in defending liability lawsuits.

Answer:

Cessna, since the late '60s, has chosen to devote most of its research dollars to jet aircraft. In that time, they have developed the Citation 500, 550, Citation I, Citation II, Citation IIS, Citation III, Citation V, Citation VI, Citation VII, Citation X, and CitationJet.

Since 1986, Cessna has developed several jet aircraft, spending most of its research dollars recently on the Citation VI, VII, X, and CitationJet.

Cessna has also had sufficient research money to develop an entrant in the JPATS trainer competition, and develop a modified Citation II for naval training use.

Cessna has had plenty of research and development money available, in spite of what it spends on products liability. However, Cessna chose to spend that money developing jet aircraft, and not improving its piston-engined aircraft to make its piston aircraft competitive in today's market. I do not buy any premise that Cessna has only been spending its money trying to keep ahead of products liability litigation, when each new aviation magazine that comes across my desk shows new Cessna jet products.

(5) On page 15 of your written testimony, you assure this Committee that manufacturers are not being subjected to frivolous law suits, and state that although they may be able to come up with a few anecdotal examples of frivolous suits, manufacturers are generally not sued unless there is significant evidence that they were at fault. However, the General Aviation Manufacturers Association has estimated that between 1986 and 1991, industry manufacturers were sued a minimum of 260 times per year. How do you reconcile your statement with those figures? is it likely that, according to your words, there was significant evidence that the manufacturers were at fault an average of 260 accidents per year between 1986 and 1991?

Answer:

I have no difficulty reconciling my statement with the figures that are presented by the General Aviation Manufacturers Association. There are thousands of aircraft crashes each year and although the NTSB finds pilot error in many of them, our investigation has shown as many times as not that the NTSB failed to uncover causes for the crash related to the manufacturers.

Secondly, I am not sure how the 260 lawsuits are being "broken down". If we sue Cessna and Continental for the failure of an engine in a Cessna aircraft, does that count as one suit or two, as reported by the General Aviation Manufacturers Association?

I regularly read the court advance sheets to determine if the courts have awarded costs against plaintiffs for filing frivolous suits. They simply do not exist, even though the courts have had the power under Rule 11 to award sanctions where a frivolous suit has been filed. The main case I am aware of for abuse of the process has been a holding against Piper, because it failed to disclose a test pilot report highly critical of one of its aircraft.

As the manufacturers know, there have been times when an investigation has been conducted but the NTSB report is not available to the public. Because of short statutes of limitations (California, for example, having a one year statute of limitations), plaintiffs are sometimes forced to sue multiple manufacturers because the manufacturers themselves (parties to the investigation) won't reveal the brand of parts involved in an accident. I have had one lawyer relate to me the experience of asking the manufacturer of a magneto if their part was on the airplane or if it was the other manufacturer's part. Engine failure had occurred but the name of the manufacturer of the part had not been revealed. In that situation, is it better to have a manufacturer escape liability because the statute of limitations period had run, or is it better to have the plaintiff sue both manufacturers of the potential magnetos on the airplane and dismiss one when the manufacturers are forced to reveal whose part was on the airplane by court order?

(6) You argue that the only effect this legislation will have is to reduce aircraft safety and unfairly shift the burden of defectively designed aircraft onto the innocent victims instead of the manufacturer. However, the actual effect will be to require the plaintiff (in a suit filed beyond the statute of repose) to identify the specific component or an aircraft which was culpable for an alleged accident or injury. Is that an unreasonable burden to place on a plaintiff?

Answer:

I cannot agree with the premise of this question. Plaintiffs have always had the burden of identifying the specific component of an aircraft that was culpable for the alleged accident or injury as part of the proof at trial. The actual effect of this legislation will be to remove from the manufacturers any duties for aircraft beyond the statute of repose. This directly impacts safety.

Respectfully submitted,

Charles T. Hvass, Jr.

MEMORANDUM

Russell W. Meyer, Jr.
Chairman
Chief Executive Officer

DATE: July 18, 1994

TO: Subcommittee on Economic and Commercial Law
B353 Rayburn House Office Building
Washington, D.C. 20515

RE: Questions for the record submitted for response in connection with Subcommittee hearing on May 12, 1994--H.R. 3087, "General Aviation Revitalization Act of 1993"

Enclosed are responses to the five questions you submitted with your letter dated June 30.

We appreciate this opportunity to complete the record for this important legislation.

Sincerely yours,

Russell W. Meyer, Jr.

Cessna Aircraft Company One Cessna Boulevard, Wichita, Kansas 67215, 316/941-8000, Fax 316/941-8400
Mailing Address P O. Box 7706, Wichita, Kansas 67277-7706

Questions for the Record

Submitted on behalf of the Republican Members

Subcommittee on Economic and Commercial Law

Questions for Russell Meyer, Chairman and Chief Executive Officer, The Cessna Aircraft Company

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(1) As you know, the legislation before us does not preclude anyone from bringing a lawsuit regarding an aircraft incident, and has been described as "consumer friendly" because of its rolling statute of repose for replacement parts. Would you comment on how this rolling statute of repose would work, if this legislation is enacted?

ANSWER: The statute of repose applies to the entire aircraft; however, if a new replacement part is installed, then, as to that part, the statute of repose is started again and, for piston engine aircraft, a new fifteen (15) year statute of repose would be applicable for that new part only.

(2) Why do you believe that the consumers of general aviation aircraft, those likely to be most affected if we pass a statute of repose, are supportive of this legislation? How do you define "consumer" in this context?

ANSWER: The Aircraft Owners and Pilots Association (AOPA), the Experimental Aircraft Association (EAA), the National Business Aircraft Association (NBAA), the National Air Transportation Association (NATA), and the Helicopter Association International (HAI) have all strongly supported the need for a statute of repose and their membership includes our "consumers", i.e. aircraft owners, pilots, and operators.

(3) Since your company has not produced piston aircraft for the past eight years, has the market for those aircraft been substantially taken over by foreign competitors?

ANSWER: Foreign aircraft manufacturers have and continue to make inroads into the United States domestic piston engine aircraft market. It is a sad commentary on our tort litigation system that today there are only nine United States manufacturers as compared to twenty-nine foreign manufacturers of piston engine aircraft.

(4) Can you tell us what foreign countries have a statute of repose similar to that suggested in this legislation? How long are those statutes of repose?

ANSWER: Although I do not know all statutes of repose in effect in many foreign countries, I can state that Japan recently passed a law allowing a ten year statute of repose and the European Common Market currently has a ten (10) year statute of repose.

(5) Mr. Meyer, unfortunately, it is too late, at this point in time, for us to pass legislation to prevent substantial losses to your industry. However, since your current liability costs include suits pending today for planes built just eight years ago, can you explain your optimism that this legislation will help you get back on your feet?

ANSWER: Yes, when a statute of reposes passes, it will eliminate design and manufacturing liability for an aircraft manufacturer if its product has survived a predetermined period of time. While it is true that we can be sued on aircraft built eight years ago, it is also true that we can be and are sued on aircraft built forty years ago. A statute of repose will bring some fairness back into the United States tort litigation system in that a manufacturer of aircraft will no longer be held liable for its products forever.

APPENDIX 2.--MATERIAL SUBMITTED FOR THE HEARING RECORD

AIRCRAFT ELECTRONICS
ASSOCIATION

U.S. HOUSE OF REPRESENTATIVES

HEARING H.R. 3087, GENERAL AVIATION REVITALIZATION ACT OF 1993

May 12, 1994
2141 Rayburn House Office Building
Washington, DC

Testimony By:
Monte Mitchell, President
Aircraft Electronics Association
13700 E. 42nd Street Terrace
Independence, Missouri, 64055
816-373-6565

Mr. Chairman and Members of the Judiciary Committee, I am Monte Mitchell, President of the Aircraft Electronics Association. I appreciate the opportunity to discuss with you, the Members of the Judiciary Committee, the opportunity we have to revitalize the general aviation industry through the Congressional enactment of H.R. 3087. H.R. 3087 simply states that no civil action for damages arising out of a general aviation accident may be brought against the aircraft or component parts manufacturers, if the accident occurred more than 15 years after the aircraft's initial customer delivery.

For your review, the Aircraft Electronics Association is the primary trade organization for the FAA Part 145 certified repair stations which sell, install and maintain avionics and electronic equipment and systems in general aviation aircraft. AEA's membership also includes most manufacturers of civil aviation avionics and related equipment. Most general aviation airframe manufacturers enjoy membership in the AEA as do most post-secondary educational institutions which offer aviation related curriculum.

As you know and as you will hear again throughout this hearing, the once great American general aviation industry has been crippled by an unfair system of product liability laws which has devastated the U.S. production of light piston aircraft - the heart of the world's general aviation fleet. The 15-year statute of repose established by H.R. 3087 will be the major stimulus that the U.S. general aviation industry needs to open aircraft production lines and component parts manufacturing facilities. This will create tens of thousands of new, stable, high paying, private sector manufacturing, engineering and related support jobs. These new jobs will help grocery stores, barber shops and other community businesses, as well as, expand local, state and federal tax revenues through payroll, sales and related taxes. New aircraft production will allow the industry to take advantage of American design and engineering ingenuity to fuel new advanced technology R & D programs. The production of new aircraft and the development of advanced avionics will allow our industry to regain its competitive position both at home and abroad. In this manner, we can expand our contribution to the American economy and, again, become a major factor in improving our balance of trade.

As you can see from the description of our membership, AEA members represent the front-line businesses and employees who, along with their valued aircraft customers, depend on a steady flow of general aviation aircraft for their business and family livelihoods. However, over the past decade, each one of these businesses have had an unfortunate element in common. I don't know of any AEA member company that has not suffered severe economic consequences as a result of this unfair product liability situation. Thousands of jobs have been lost and will continue to evaporate at our member's facilities as business stagnates under the weight of unreasonable product liability costs which is the single most important factor contributing to the steep decline in the U.S. production of general aviation aircraft - A decrease from 18,000 aircraft in 1978 to fewer than 900 in 1993.

Even it its depressed state, the general aviation avionics sales, installation and service market is a large economic contributor to our economy and is valued at approximately $1.5 billion. The room for expansion is tremendous considering the large pent-up demand for light aircraft in this country. This demand will not be filled by American companies without the passage of H.R. 3087.

We recognize that at this time, the original aircraft and component parts manufacturers absorb the major financial costs of product liability litigation and damage awards. But, we are not looking for a free ride in the retrofit marketplace as was suggested in an October 19, 1993 Wall Street Journal article. In this article, an aviation plaintiff's attorney stated that "the bill's (H.R. 3087) passage may help manufacturers but will hurt. . . . maintenance shops. . . .because passengers and customers will be suing them for larger amounts of money". This is only speculation.

As you know, general aviation aircraft are altered significantly over their lengthy lifetime. AEA members constantly retrofit new avionics into aircraft and systematically maintain and service existing avionics as well as perform other alterations to airframes. In fact, we estimate that a general aviation aircraft has a complete turnover in its avionics package every eight years. This, combined with the periodic airframe and engine alterations made to the aircraft, creates what amounts to a totally different aircraft from the one which originally rolled off the assembly line 15 years before.

AEA members have always accepted responsibility for the quality of the work they performed. H.R. 3087 does not change this situation. We believe, and H.R. 3087 guarantees, that everyone who alleges an injury in a general aviation accident will have access to the court system to pursue appropriate judicial remedies. H.R.

3087 will hold all entities involved in the manufacturing, installation, alteration and service of the aircraft and its equipment liable for their workmanship throughout a rolling 15-year period. This is fair and reasonable and whatever "bump" our members may see in liability insurance premiums is well worth the alternative which is the collapse and disappearance of the U.S. general aviation industry.

The Aircraft Electronics Association is asking you to support a simple and fair 15-year statute of repose. This will limit manufacturer's liability to a reasonable time period, reduce cost of new airplanes and create thousands of jobs. The President's Airline Commission was convinced that a viable American general aviation industry is an absolute necessity for a stable and financially sound U.S. airline industry when they strongly recommended the enactment of a 15-year statute of repose for general aviation manufacturers. Equally important, H.R. 3087 has the support of the entire general aviation community: manufacturers, maintenance facilities, labor as well as all consumer groups representing aircraft owners and pilots. Today, I urge you to recognize this strong and comprehensive support and I ask you for your support to revitalize the general aviation industry by enacting H.R. 3087

Thank you for the opportunity to present this testimony on H.R. 3087.

STATEMENT OF U.S. REPRESENTATIVE JIM SLATTERY
IN REGARD TO H.R. 3087
THE GENERAL AVIATION REVITALIZATION ACT OF 1993
MAY 12, 1994

I wish to take this opportunity today to express my support for H.R. 3087, the General Aviation Revitalization Act of 1993, introduced by my Kansas colleague, Representative Dan Glickman. I applaud Mr. Glickman's efforts and the nearly 300 House cosponsors of this legislation. Chairman Brooks, I am pleased that you are holding a hearing today on this important legislation.

A similar measure sponsored by Senator Nancy Landon Kassebaum passed in the Senate with wide support in March. The momentum for enactment of aircraft liability reform is mounting and I am glad that the Congress is acting swiftly this year.

Simply put, this is good news for our country's businesses and employees. Aircraft manufacturers are already indicating their intentions to return to or expand production of piston-engine planes after the bill's enactment and an estimated 25,000 jobs would be created by enactment of this legislation. The General Aviation Manufacturers Association estimates that 100,000 jobs have been lost since 1980 due to U.S. piston airplane manufacturers going out of business or leaving the market.

I have had the opportunity to visit with many Kansas aircraft manufacturer executives, labor employees, and pilots this year and they all stress to me the importance of Representative Glickman's bill. Cessna Aircraft Company and Beech Aircraft Corporation, both with operations in Wichita, Kansas, will greatly benefit from the revitalization of the industry. By creating a fifteen year statute of repose, the manufacturers will be relieved from focusing much of their time and attention on lawsuits and allow them to remain focused on their purpose -- to build aircraft and be competitive in the global marketplace.

Thank you, Mr. Chairman, for allowing my comments to be inserted in the transcript of this hearing.

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